

Memorandum

To: Arizona Judicial Council
From: Jeff Deiley
Date: 10/11/2010

RE: Response to Ira Ellman's Memo posted 10/7/2010 - GRC Follow-up to Deiley's Information.

Dear Madam Chair and Honorable Members:

I am submitting this letter in response to the GRC memo titled "GRC Follow-up to Deiley's Information" that was posted on the AJC website Thursday October 7th (2 days after the published deadline to submit materials for the October 21st AJC meeting). The memo is from Ira Ellman, a member of the GRC committee and it is included in the printed materials for review and consideration by the AJC. It is unclear from the memo if this is an official position from the GRC or if these are solely the opinions of Mr. Ellman. The first section of this letter will provide some background of my communications and multiple requests for feedback from the GRC. The second section will specifically address allegations made by Mr. Ellman regarding his opinions of the validity of my analysis and findings.

Section I: Background

I was surprised when I read Mr. Ellman's public response regarding the work I prepared and submitted in good faith to the GRC, AJC and to Mr. Ellman personally. Over the course of the last four months, I have repeatedly asked Mr. Ellman and the GRC for assistance to address questions in the COBS process and methodology and for constructive feedback regarding the financial models that I created to measure empirical data related to child support in Arizona. Since the public was not offered membership¹ on the GRC and is almost completely unaware of the sweeping changes proposed to child support by the GRC, I did not think it was unreasonable, as an impacted citizen, to ask for further explanation from the GRC. Furthermore, as of the time of this letter, the GRC still has not provided any scientific evidence that child support in Arizona is either too high or too low; instead, the GRC has only referenced a 'perceived inadequacy' in child support. Therefore, one of my primary objectives was to determine if there was a scientific method to measure the adequacy of child support to help answer this fundamental question.

I first met Mr. Ellman on May 20, 2010 at which time I expressed to him some confusing results I had encountered regarding the rate (percentage of obligor's income) of child support that appeared to increase as the NCP's income increased. From his theory papers, I knew that he did not think that the rate of the obligor's income should decrease but I did not think that it would actually increase with increases in income. Mr. Ellman seemed confused by these findings as well, made a comment that "John's Hopkins was supposed to verify that" and asked me if I could send him my analysis for his review. I sent him my entire model including all of the data I had generated from the COBS model for his review and feedback. Mr. Ellman responded on 6/1/2010 indicating that he received the model but that he had not had a chance to review it yet (Attachment A). I reminded him again on June 4th in the GRC public meeting that I was anxious to receive his feedback. Then again, on September 10th in the next GRC public meeting, I offered to provide the GRC my entire model including all data and calculations with the hope that the GRC would respond with feedback since the results of my analysis were very different from those published by the GRC. I was operating with the understanding

¹ A drastic change from at least 1996 when the public held various voting positions on the various Committee's in regard to reviewing and updating the child support guidelines.

that this process was to provide “...a very open and inclusive process” and that they “...would like to hear from many people with varying views”². The GRC Committee Chair had also been verbally advocating openness and transparency for the public. Neither Mr. Ellman nor the GRC ever responded to any of these invitations and the only feedback that I ever received was the critical memo published to the AJC from Mr. Ellman discrediting my analysis. Mr. Ellman did not extend professional courtesy of notification or discussion of my analysis although he had all of my contact information readily available to him. I expressed on several occasions my willingness to provide my time³ to further discuss questions regarding the COBS model and to work with the GRC as a concerned citizen. All of my suggestions and offers to help were ignored - perhaps this helps to explain why the public knows so little about the work products of Mr. and Mrs. Ellman and the GRC.

The GRC is charged with the important duty of reviewing child support guidelines and preparing recommendations that will best serve the needs of the public regarding child support guideline modifications. This quasi-legislative process has had no representation from the public; when the public has attempted to participate in what should have been a collaborative process, the committee has responded in the manner most familiar with the legal system – they have treated the public as adversaries. Any lawyer knows that the best way to prove that you are right is to prove that your opponent is wrong. By withholding his opinions for four months, despite direct requests for feedback, and publishing them when it is too late for the ‘opponent’ to respond, Mr. Ellman pulled one of the oldest tricks in the book. If COBS is to be held up as a national best practice as Mr. and Mrs. Ellman and the GRC expect⁴, why would Mr. Ellman have to resort to such tactics to avoid the analysis findings of a single citizen?

Section II

Mr. Ellman alleges that the report I submitted to the GRC on September 10, 2010 is “invalid for a number of reasons”⁵. He cites three reasons for his opinion:

1. “Estimates of the taxes paid by each parent systematically overstate the taxes paid by the higher earning parent...”
2. “The column labeled ‘COBS Order Amount’ contains figures that are not the COBS order amount. His ‘COBS Order amount’ includes the non custodial parent payments to third parties” (note: Mr. Ellman actually addresses the same additional expense allocation issue in his items numbered “2” and “3”)
3. The analysis “...compares incomes, when it should be comparing the living standards of the two parental households”.

Since Mr. Ellman did not take this opportunity to dispute any of the other findings in the report I submitted to the GRC on September 10, 2010, I will make the assumption that Mr. Ellman agrees with the other findings that I published in this report.⁶ I will separately address each of Mr. Ellman’s three allegations below:

1. “Estimates of the taxes paid by each parent systematically overstate the taxes paid by the higher earning parent...”

² Monica Stauffer and Kim Gillespie, Co-Chairs of the Economic Study Workgroup, 6/1/2005 (see Attachment B).

³ I have a graduate degree in business and over 20 years experience working with and creating financial business models. I felt that I could assist in this highly complex process by volunteering my time.

⁴ “Basically, this is an attempt at a comprehensive overhaul of the guidelines, which, if successful, would likely be held up as a national best practice.” Megan Hunter, Letter to NCSL, 11/23/2004 (see Attachment C)

⁵ Memo from Ira Ellman titled “The GRC’s Response to the ‘Report to the AZ Child Support Guidelines Review Committee’”. 10/7/2010.

⁶ Including (1) based upon the actual dollar amount change resulting from COBS, at least 43% of the public will be seriously impacted by the implementation of COBS and (2) COBS produces higher child support awards than all other states in many moderate and high income disparity cases. I would have appreciated the opportunity to explain my report to the GRC but I was only offered three minutes to present my comments.

Mr. Ellman's allegations regarding the tax estimation method are his opinions stated as if they were fact. The truth is that both methods (standard deduction and average tax rate) will incorrectly estimate the actual tax rates in most cases, it's more a question of which method is more appropriate to use for this purpose. I used Turbo Tax to estimate the federal and state tax amounts assuming standard deductions to create a tax table in my model. To confirm that this approach was congruent with similar practices, I performed the following research:

- A. I tested the child support calculators used by California and Delaware against the rates produced by Turbo Tax since both of these states include the estimated taxes in the guidelines and order amount worksheets. I found that both of these models use tax rate estimates that are almost identical to those produced by Turbo Tax. I also documented this in my 9/10/2010 report to the GRC⁸.
- B. I also found that a standard deduction approach was used by Braver and Stockburger in "Child Support Guidelines and the Equalization of Living Standards"⁹. When they performed a sensitivity analysis considering variability of several different assumptions, including the tax estimation approach, they reached the following conclusion: "...the analyses were substantially insensitive to or robust against the assumptions...altering these assumptions in other plausible and reasonable ways did not change the overall conclusions greatly"¹⁰.

Contrary to Mr. Ellman's allegations, I have clearly documented my tax assumptions several times over the last four months including in my e-mail to Mr. Ellman on 5/20/2010 and in my report dated 9/10/2010. If he had additional questions regarding my tax assumptions or any suggestions to align my assumptions with those of the GRC or his wife's work products, he could have simply responded to my repeated invitations to discuss the matter.

I also respectfully disagree with Mr. Ellman's assumption that the committee's method requires no assumptions because their method does not distinguish between taxes paid by intact families and those paid by divorced families. For example, it might seem fair to compare all single filers making \$100,000 per year to a person filing as a single person after divorce who also makes \$100,000 per year. We might therefore assume that they live in similar homes with similar associated mortgage deductions, real estate taxes, charitable contributions, etc. However, this comparison could be seriously flawed because in reality, this person might (1) live in an apartment because his former wife lives in the family home and he doesn't want a home because the maintenance and upkeep would interfere with the limited time he has with his children on the weekends, (2) the money that he formerly gave to his temple and to charity now goes towards child support payments, (3) he currently has a deduction for the alimony he pays to his former wife that is about to expire but the new COBS amount will surpass the current amounts of alimony and child support combined with no tax benefit (4) he pays an additional \$1,000 per month towards the \$50,000 debt he acquired in attorney and psychologist fees associated with a prolonged custody dispute (5) he pays for a three bedroom apartment, still pays for club soccer and has higher food expenses than an average single person. This scenario, all too familiar to those who live with the reality of divorce, should consider why it can be very

⁸ "Tax estimate: Turbo Tax 2009 was used to generate Federal and AZ State taxes. FICA calc is 6.2% of gross income with an annual cap of \$6,621. MED is 1.45% of gross income. Federal, FICA & MED tax estimates were also compared to tax estimates from other state calculators including Delaware (avg. difference of 0.9%) and California (avg. difference of 2.4%). Tax estimates in \$1k increments. Parental gross incomes were rounded to the closest \$1k and the associated tax rate was used to generate the estimated taxes." Deiley, J. Report to GRC, 9/10/2010.

⁹ "Taxes: In the base analysis, we assumed the standard deduction was taken by both parents." Braver, S & Stockburger, D. Braver S. & Stockburger D. (2004) Child Support Guidelines and Equal Living standards, The Law and Economics of Child Support Payments.

¹⁰ *Id*

dangerous to apply broad averages to post divorce situations. This also illustrates why it is important to perform an independent review of the GRC's assumptions as they appear to believe that there is only one correct method to address very complicated issues such as tax computations for child support purposes.

2. "The column labeled 'COBS Order Amount' contains figures that are not the COBS order amount. [Mr. Deiley's] 'COBS Order amount' Includes the non custodial parent payments to third parties"

I completely agree with Mr. Ellman's statement of this computation approach as net income was erroneously calculated. I added additional expenses to both Income Shares and COBS base order amounts for comparison purposes. I assumed that additional expenses would be paid by the obligee and that the obligor's portion would be added to the base order amount. I also accounted for the obligee's portion of the additional expenses as an expense against net income to fully reconcile the total additional expense amount. While this approach properly identifies the payment amounts, it failed to account for the full additional expense amount in the net income calculation of the obligee. Fortunately, this was a very easy correction to make in the logic of my model. This also provided an opportunity to reflect the updated additional expense allocation factor from the COBS model that was released just days before the 9/10/2010 GRC meeting. Since all my reports are generated from a dynamic data source, I just refreshed all of the associated tables and graphs to assess the change in the results. This problem could have been easily addressed without unnecessarily attempting to discredit my work before the AJC.

Results Following Net Income Correction and Additional Expense Allocation Change

Changes to the net income calculation and the additional expense allocation methodology resulted in only minor shifts to the main themes that I published on 9/10/2010 and also the Report to the AJC on 10/5/2010 (I have attached an updated version of the Report to the AJC at the end of this memo). Mr. Ellman also made a point of illustrating two cases from the ten examples that I provided to illustrate my calculation errors. In fact, the net incomes in 5 of the 10 cases remain within 4% or less and the net incomes in 8 of the 10 net incomes remain within 9% or less after the corrections. The results of these specific ten cases are not very important because the intent of this table was to respond to the GRC statement that COBS is not designed to equalize net incomes. What I found is that income equalization occurs in some high disparity cases but that most cases resulted in the CP receiving more net income than the NCP in 89% of cases (adjusted now to 86% of cases after the changes noted above).

Without any attempt to discuss this matter with me, Mr. Ellman draws unfounded conclusions and makes false allegations regarding my work when he states: "Mr. Deiley's implicit assumption throughout the report is that a child support system is suspect if its effect is to equalize parental incomes, when the truth is the opposite: it is suspect if it fails to at least equalize incomes in cases such as this one, which are not uncommon." The purpose of my comparison of net incomes across the case file sample is not to state that they should or should not be equalized; the purpose was to provide actual data related to the claim from the GRC that COBS would not result in income equalization. I could have made that point clear if I was given more than three minutes to share the assumptions and findings of my analysis.

3. The analysis "...compares incomes, when it should be comparing the living standards of the two parental households".

I must respectfully disagree with Mr. Ellman's opinion that the only way to analyze the impact of COBS or of any other child support system is to compare the living standards of the two parental households. Other states don't approach child support in this manner so it is unclear why Mr. Ellman believes that this is the one and only way to assess child support. I believe that this is the single most important issue that appears to

divide the supporters and critics of COBS. It is important to start with some fundamental definitions in order to address the controversy on this topic:

Household Defined:

Individuals who comprise a family unit and who live together under the same roof; individuals who dwell in the same place and comprise a family, sometimes encompassing domestic help; all those who are under the control of one domestic head.¹¹

Household income defined:

Household income is the sum of money income received in the calendar year by all household members 15 years old and over, including household members not related to the householder, people living alone, and other nonfamily household members. Included in the total are amounts reported separately for wage or salary income; net self-employment income; interest, dividends, or net rental or royalty income or income from estates and trusts; Social Security or Railroad Retirement income; Supplemental Security Income (SSI); public assistance or welfare payments; retirement, survivor, or disability pensions; and all other income¹².

By most definitions, a household (HH) is the sum total of the people who live collectively as a unit. **With that understanding, the algebraic illustration below describes why it is impossible for the COBS methodology to work correctly with any measure of consistency, predictability or reliability:**

$\text{Income}_{\text{NCP}} + \text{Income}_Y = \text{Total HH Income}_{\text{NCP}}$ (where Y = additional spousal income in the NCP HH where applicable)

$\text{Income}_{\text{CP}} + \text{Income}_Z = \text{Total HH Income}_{\text{CP}}$ (where Z = additional spousal income in the CP HH where applicable)

$\text{Adult}_{\text{NCP}} + \text{Adult}_Y = \text{Total HH Adults}_{\text{NCP}}$ (where Y = additional spouse in the NCP HH where applicable)

$\text{Adult}_{\text{CP}} + \text{Adult}_Z = \text{Total HH Adults}_{\text{CP}}$ (where Z = additional spouse in the CP HH where applicable)

The equations above reflect some of the inputs required to correctly calculate a simple household standard of living (a more comprehensive formula including children and economies of scale would be used for the complete calculation). It is necessary to understand how many adults are in each household and the income amount of each adult. **COBS does not obtain enough information to complete this formula so it assumes that the Y and Z variables simply do not exist.** It is clearly evident from every source that addresses individual incomes and household incomes that household incomes will always be higher on average because 42% of households have two or more wage earners¹³. The table below from the Census Bureau illustrates this point¹⁴:

¹¹ West's Law Encyclopedia

¹² U.S. Census Bureau. http://quickfacts.census.gov/qfd/meta/long_IPE010208.htm

¹³ U.S. Census Bureau, Current Population Survey, 2006 Annual Social and Economic Supplement.

¹⁴ U.S. Census Bureau, 2003

Criteria		Overall	Less than 9th grade	High school drop-out	High school graduate	Some college	Associates degree	Bachelor's degree	Bachelor's degree or more	Master's degree	Professional degree	Doctoral degree
Median individual income	Male, age 25+	\$33,517	\$15,461	\$18,990	\$28,763	\$35,073	\$39,015	\$50,916	\$55,751	\$61,698	\$88,530	\$73,853
	Female, age 25+	\$19,679	\$9,296	\$10,786	\$15,962	\$21,007	\$24,808	\$31,309	\$35,125	\$41,334	\$48,536	\$53,003
	Both sexes, age 25+	\$32,140	\$17,422	\$20,321	\$26,505	\$31,054	\$35,009	\$43,143	\$49,303	\$52,390	\$82,473	\$70,853
Median household income		\$45,016	\$18,787	\$22,718	\$36,835	\$45,854	\$51,970	\$68,728	\$73,446	\$78,541	\$100,000	\$96,830
Difference between Male & HH		26%	18%	16%	22%	24%	25%	26%	24%	21%	11%	24%
Difference between Female & HH		56%	51%	53%	57%	54%	52%	54%	52%	47%	51%	45%

The table above also identifies that females are likely to have a gap between personal income and household income that is twice as high as males. This tells us that if we just use the personal income of the mother (usually the custodial parent), there is a good chance that we will be grossly underestimating the resources available to those within that household. The same holds true for fathers but would exist on a smaller scale on average. This is not to say that we expect a stepfather to pay for his stepchildren's clothes but he certainly will be providing for his wife's standard of living in ways that exceed a subjective assessment of her defrayed expenses.

Mr. Ellman wants us to believe that we can calculate a household standard of living with only half of the information needed to complete the mathematical equation. It is my opinion that any attempt to bifurcate the household standard of living to create an analysis of specific individuals within the household (i.e. parent with natural children only) would require very specific instructions and assumptions measured against the full set of data. The outcomes would then need to be tested to assess the viability of this approach. Ignoring data that may drastically change the standard of living measurement is fundamentally flawed and has no place in establishing policy that will direct the movement of billions of dollars needed by families.

Conclusion

It is clear that Mr. Ellman would like you to believe that all of the analysis I have prepared regarding COBS is invalid; the course and manner in which he expressed his opinions is also concerning. I have addressed the three areas that Mr. Ellman cited including the correction of one computation. I reported that this correction does not materially change the outcome or conclusions that I reported to the GRC on 9/10/2010 or in the report to the AJC dated 10/5/2010. Furthermore, I respectfully suggest that the AJC recognize that many of the core assumptions made by Mr. and Mrs. Ellman in developing the theory behind the COBS methodology is rooted in theoretic opinions and has not been vetted in a manner that would provide for adequate consideration of the drawbacks or success of this approach. I understand that Mr. Ellman wishes to defend his concept since he has been actively pursuing its implementation for nearly a decade. I further understand why he would wish to defend his wife's work as well on this project but I believe that it is improper to use his position on the GRC for this purpose. There will be much upside gain for Mr. and Mrs. Ellman if COBS is passed in Arizona since they are the founders of this concept and would be in high demand as other states would need expert consultants to explain the methodology and associated tools.

Thank you for your consideration. Please feel free to contact me at www.readandlearn2700@yahoo.com if you have any questions or comments.

Attachment A

--- On Tue, 6/1/10, Ira Ellman <

> wrote:

From: Ira Ellman <
Subject: RE: COBS Model Assessment
To: "'read and learn'" <readandlearn2700@yahoo.com>
Date: Tuesday, June 1, 2010, 6:39 AM

I just wanted to let you know I did get this. Haven't yet had a chance to study it.

IE

From: read and learn [mailto:readandlearn2700@yahoo.com]
Sent: Monday, May 24, 2010 10:54 PM
To: Ira Ellman
Subject: COBS Model Assessment

Professor Ellman,

As we discussed last Thursday evening, I am sending you the data sampling and associated analysis that I performed on the COBS model that you and your wife developed. The data for this exercise was collected directly from the 'Adjustment Tables' tab on the COBS model. I wrote a macro to transfer this data to my spreadsheet, exactly as it is listed in the COBS model, for each scenario (single CP income value against NCP income values in \$2k increments ranging from \$2k to \$20k for 1 child, 2 children and 3 children for 100 parenting days and 182.5 parenting days). I manually reviewed the results and deleted the scenarios that resulted in transposing the income values for the CP and NCP as the model is designed to do in certain cases where the CP is the higher earner.

Once I validated the data results, I added some calculations to create several metrics that were used in the model analysis. For the tax calculations, I used TurboTax 2009 and assumed a single filer for the NCP parent and Head of Household with the corresponding number of children for each scenario. I left the calculations intact in the 'Data' tab if you would like to check the logic.

The charts that we discussed on Thursday were created from the data and the associated metrics. You will find that you can easily run several scenarios to analyze by recalibrating the pivot tables that drive the charts.

Please let me know if you have any questions or would like to further discuss the model and/or interpretations.

Thank you
Jeff Deiley

Attachment B

Monica L. Stauffer
Superior Court Judge
P. O. Box 1256
Chandler, AZ 85221
Phone: [REDACTED]
Fax: 928.468.5151



June 1, 2005

Ira Mark Ellman
Professor of Law
Arizona State University College of Law
P. O. Box 877906
Tempe, AZ 85287-7906

RE: Economic Study Work Group

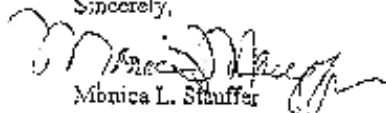
Dear Professor Ellman:


As co-chairs of this Committee, we met with Megan Hunter to discuss the approach for our future meetings. We discussed Dave Byers' recommendations and your thoughts from an e-mail you sent to Megan.

We have decided that we want to have a very open and inclusive process. Since we are not economists, we would like to hear from many people with varying views. Due to lack of funding, we will have to rely on experts who are willing to travel at their own expense. We plan to invite someone from PSI to present to the group. Megan will also contact the two economists you mentioned to see if they would be willing to assist us at no cost.

We look forward to working with you on this Committee, and thank you for sharing your expertise with the group.

Sincerely,


Monica L. Stauffer
Superior Court Judge
Greenlee County


Kim D. Gillespie
Section Chief Counsel
Child Support Enforcement
Arizona Attorney General's Office

Attachment C



Supreme Court

STATE OF ARIZONA
ADMINISTRATIVE OFFICE OF THE COURTS

Charles E. Jones
Chief Justice

David K. Byers
Administrative Director
of the Courts

November 23, 2004

Christi Goodman
NCSL
7700 East First Place
Denver, CO 80230

Re: Child Support Guidelines Study

Dear Ms. Goodman,

About a month ago we discussed the Arizona Child Support Guidelines Project that will begin in January, 2005, led in part by Dr. Ira Ellman, Arizona State University, School of Law. Co-chairs of the group are Kim Gillespie, Child Support Section Chief, Office of the Attorney General, and Honorable Monica Stauffer, Presiding Judge in Greenlee County, Arizona. Both are members of the State Legislature's Child Support Committee, the group that is responsible for this project. Representative Peter Hershberger and Senator Jim Waring serve as co-chairs of that Committee.

The mission or goal of the group is to take a look at the underlying economic estimates, i.e. child-rearing costs, the method of computing the Schedule of Basic Support Obligations and the model itself. Basically, this is an attempt at a comprehensive overhaul of the guidelines, which, if successful, would likely be held up as a national best practice.

We have invited economic expert, Dr. Burt Barnow, Johns Hopkins University, and guidelines expert, Laura Morgan, SupportGuidelines.com, to join the group. We would like to fly them out for as many meetings as possible. Does your organization have funding to assist with these costs? If so, what procedure do we need to follow to request the assistance?

Thank you for your time and help with our endeavor.

Sincerely,

A handwritten signature in dark ink, appearing to read "Megan Hunter".

Megan Hunter
Child Support Committee Staff

cc: Senator Jim Waring, Representative Peter Hershberger

Report to Arizona Judicial Council

Scientific Analysis of Existing and Proposed Child Support Methodologies



October 5, 2010
(Updated October 11, 2010)

Jeff Deiley

Executive Summary

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I. Introduction

The Arizona Judicial Council (AJC) has been charged with the quasi-legislative duty to review and vote on recently proposed child support guideline changes. No public membership was offered to participate on the Child Support Guidelines Review Committee (GRC) and the GRC has not accepted offers to review and assess relevant work produced by the public regarding COBS. This report is offered in response to the invitation extended by the AJC to conduct analytical assessments and provide alternative perspectives that the GRC may not have considered or investigated.

II. Arizona Case File Data Analysis

Scientific Validation of Underlying Perceptions and Assumptions Regarding Child Support

Theories are difficult to challenge because they are often based upon belief systems, not scientific evidence. This holds true with 'The Theory of Child Support' by Ira and Tara Ellman, the blueprint for the proposed Child Outcome Based Support (COBS) model, because the underlying assumptions, order amounts and social impacts have not been measured or empirically tested. Therefore, any debate, without some level of validation, will simply result in conjecture.

To address this issue, a scientific methodology needs to be established in order to fundamentally:

- (1) Test the GRC's basic assumptions regarding the adequacy of existing Income Shares
- (2) Provide a comparison of existing Income Shares to the proposed COBS order amounts and assess the expected impact on the public.
- (3) Compare existing Income Shares and proposed COBS order amounts to the order amounts in other states. This will provide an additional 'sanity check' to aid in the overall evaluation.

In accordance with these objectives, the 2007 Arizona case file data sampling (CFDS) prepared by Center for Policy Research (CPR) was used as a representative sample population for this exercise. The CFDS contains 567 case file samples; this is the same data source that has been used by the GRC to prepare their forecast of the impact of COBS on the public¹⁵. This author employed a comprehensive analytical approach using the CFDS to compute precise COBS order amounts for every case, calculate tax amounts using dual source validation, incorporate a measure of family size factors as prescribed by Dr. Sanford Braver and Dr. David Stockburger¹⁶ and create a variety of ratios and segment indicators for reporting purposes. This approach resulted in a 210 x 567 data set that was used to generate the findings listed below. In order to compare the state support amounts, Ten (10) standard scenarios were tested using each state's official online child support calculator or written guidelines. Data points were captured for 36 states, including both Income Shares and COBS in AZ. A cost of living (COL) factor was also applied to the support amounts to normalize the relative value of each state's support amounts for comparison purposes. Detailed information regarding the methodology, sources and other considerations is contained in Appendix A: Methodology.

¹⁵ "The Center for Policy Research provided the data in an electronic form accessible by other researchers, which allowed Tara Ellman to analyze data from the case file review report". Final Report and Recommendations of the Child Support Guidelines Review Committee (3/25/2010)

¹⁶ Braver, S & Stockburger, D. Braver S. & Stockburger D. (2004) Child Support Guidelines and Equal Living standards, The Law and Economics of Child Support Payments.

Executive Summary

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Analysis Findings

1. Is Existing Child Support Inadequate?
 - **GRC:** Yes – The GRC cites a ‘perceived inadequacy’ in support amounts. No evidence or measure of existing child support’s inadequacy has been offered.
 - **Analysis:** Existing child support appears to adequately provide for custodial parents relative to non custodial parents’ means but does not protect the child from potential poverty conditions with low income non custodial parents.
2. Does COBS include hidden alimony?
 - **GRC:** No official statement on record from the GRC
 - **Analysis:** Yes, an analysis of the 42 cases from the CFDS that contain spousal support indicates that on average, COBS amounts are equivalent to **91% of the combination of existing child support plus alimony.**
3. Does COBS result in an equalization of incomes and/or standards of living?
 - **GRC:** No – “Those who oppose the method continue to misstate that the goal of COBS is to equalize the income in each household. *They have failed to identify even one example in which this occurs and have failed to cite any provisions set forth in the methodology that supports this claim.* Despite comprehensive discussion, the claim continued to be asserted without any foundation.”
 - **Analysis:** Yes – high disparity differences in income are not only equalized in some cases but overall, CPs are left with higher net incomes than NCPs in **86% of the cases.**
4. How will COBS affect the public?
 - **GRC:** “For the majority of people in Arizona, they’re not going to realize a huge change in their child support...the system is fair, and the majority of parents won’t notice much of a difference in the payments they make, or the payments they receive.”¹⁷
 - **Analysis:** Child support amount changes from current Income Shares to COBS, as measured in dollar change amounts, **will seriously impact at least 41% of the public that pays or receives child support.**
5. How does COBS compare to support amounts in other states?
 - **GRC:** “Across the board...in no situation were we [COBS] the highest in the country”.¹⁸
 - **Analysis:** COBS generates **support amounts that exceed every other state in the nation in a large number of moderate and high disparity income scenarios.** Even in low income disparity cases, COBS is among the highest support amounts in the nation.
6. Does COBS protect the outcome of the child?
 - **GRC:** Yes – “The proposed Child Outcomes Based Support model reflects a systematic consideration of the impact of parental separation on the parents and their children to *achieve outcomes that protect the financial well-being of the child while remaining fair to both parents*”¹⁹.
 - **Analysis:** No - children with low income NCPs will not be protected from gross income disparities – this privilege is reserved only for low income custodial parents.

¹⁷ Jennifer Liewer, spokesperson for the Supreme Court. Statements made to KPHO Channel 5 on 9/21/2010.

¹⁸ GRC Chairman Bruce Cohen, AJC meeting 6/24/2010

¹⁹ Final Report and Recommendations of the Child Support Guidelines Review Committee (3/25/2010)

Executive Summary

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Analysis Conclusions

1. No amount of analysis on COBS will produce an accurate assessment of the parental standards of living because “a sensible analysis of child support policy must take the situation of the whole household into account”²⁰ including the incomes of others such as new spouses. COBS only considers the natural parents’ adjusted gross incomes to compute a standard of living measurement. This standard of living comparison will misrepresent the actual standard of living experienced by members of each household in a majority of cases since it does not consider the incomes and expenses of other members of the household. As a result, the living standard in some households will be grossly understated while the living standards in other households will be grossly overstated. Inaccurate standard of living benchmarks will lead to inaccurate child support assumptions and support orders.
2. The conservative net income per adult unit (NIAU) analysis reveals that the majority of custodial parents already have a higher standard of living than non custodial parents and that COBS further reduces the standard of living for non custodial parents (results restricted to the limitations listed above). Additionally, state child support comparisons illustrate that COBS creates child support amounts that are significantly higher than other states. The GRC’s solution to address the exorbitant amounts is to *possibly* reduce, at the discretion of a judge, the order amounts between 1% – 25% if certain criteria are met. This acknowledgement that support orders should be reduced and this patchwork solution validates that the underlying calculations and methodology in COBS are flawed. There is no reasonable basis to dispose of a system that uses child expenditure data to estimate child support in favor of a system that uses no supporting data and arbitrarily establishes tolerances that are rooted in value judgments. Such thinking suggests that because the current expenditure data is not perfect, that we should abandon using any data and instead rely upon intuition applied to an inherently flawed and inadequate SOL process.
3. The data analysis suggests that COBS is roughly equivalent to existing child support + alimony. ARS 25-320 requires that guidelines consider the needs of the child and parents; it also requires consideration of “The standard of living the child would have enjoyed had the marriage not been dissolved”. Unfortunately, it is impossible to calculate or quantify what the standard of living would be, either for the child or the parents, because the marriage was dissolved and every person’s life changed as a result. COBS can no better predict what a child’s standard of living would have been than any other existing method. The concern regarding the COBS approach is that it places full responsibility upon the non custodial parent to supplement the custodial parent’s standard of living to purportedly meet the *needs* of the child. Supporting a former spouse’s standard of living is the purpose of alimony, not child support. COBS cannot usurp this purpose as spousal maintenance requires consideration of many other factors that do not relate and cannot be properly governed under child support.
4. The data analysis demonstrates that there is no basis to believe that children of high income NCPs are suffering in poverty but there is concern that children may be exposed to poverty conditions when the NCP is a low earner. COBS is based upon the premise that children suffer when there is a gross disparity between parental households. While there is research that children suffer when raised in poverty, there is no research to support the opinion that a child raised in a middle class home suffers when they spend time with their other upper middle class parent. The approach used by COBS is based upon opinions and requires value judgments to manipulate the underlying tables.

²⁰ Ellman, I.M. Theory of Child Support, Harvard Journal on Legislation, Vol. 45, No. 1, 2008

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III. Professional and Academic Evaluations of Income and SOL Equalization Theories

1. Hidden Alimony: Any transfer of wealth from one parent to another that does not benefit the child would be considered hidden alimony²¹
2. Discourages Workforce Participation: Transferring income from one parent to another can incent the low wage earner to not pursue improvements in his or her work abilities and opportunities²².
3. Statutory Issues with Including the Income of New Spouses in HH Income: Both the Income Equalization model and the ALI model include the incomes of new spouses in each household²³. However, Arizona “state law does not allow us to consider income from a new spouse”²⁴.
4. Methodology Constitutes the Distribution of the Obligor Parent’s Estate: One of the fundamental flaws that an income distribution model assumes is that all of the income earned is used for consumption when in fact, a portion of this income does not result in an immediate standard of living improvement since it is used for savings or other similar purposes²⁵.
5. Provides an Inappropriate Windfall to the Child: In high income situations, a child support award can result in a payment that grossly exceeds the child’s needs²⁶.
6. May Infringe upon a Parent’s Right to Direct the Lifestyle of His or Her Children: “Although entitled to support in accordance with the pre-separation standard, a child is not a partner in the marital relationship, entitled to a ‘piece of the action’”²⁷.

²¹ Ronald K. Henry, When the Real World Intrudes Upon Academics and Advocates, 1999 Child Support Symposium, Vol. 33 No. 1 1999

²² Harris L.J., The New ALI Child Support Proposal

²³ Robert Williams, Guidelines for Setting Levels of Child Support Orders, 21 Fam. L.Q. 281, 302 (1987).

²⁴ Cohen B. Section II(B)(2) The remarriage issue, June 4, 2010, Submission to Guideline Review Committee

²⁵ Laura Morgan (2001) Child Support Guidelines and High Income Parents

²⁶ *id*

²⁷ *id*

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IV. Recommendations

The GRC is comprised of professionals who collectively know a great deal about Family Law and it is fully recognized that this committee has invested a great deal of time and effort on this project. However, it must also be recognized that adjudicating cases is one thing but building a highly complex financial tool that dramatically departs from all other known and tested models is quite another. We know these respected judges and lawyers understand what happens inside the courthouse but we didn't give them a hammer and nails and expect them to construct the building itself. In the same manner, it is unreasonable to expect this committee to have the skills and experience needed to perform and validate complex data analysis and financial model construction. The GRC chose a resource to perform most of these analysis functions who may or may not have been qualified but by appearance, was selected because her spouse is a member of the committee. Furthermore, there is an undeniable appearance of a conflict of interest as this husband and wife team could clearly stand to gain academic and financial rewards if COBS is adopted in AZ as it would provide potential opportunities to offer consulting services to the other 49 states (i.e. the creator of Income Shares operates a company that grosses over \$100MM per year).²⁸ Despite comments from the GRC chairman on this matter that attempt to dismiss all public concerns simply as personal attacks, this is a serious matter of law and ethics specifically related to the development of public policy and guidelines that will direct the movement of billions of dollars needed for the welfare of families in this state.

The methodology that underpins COBS cannot work as the fundamental premise is to manage parental standards of living but all of the information required to perform such calculations cannot be included per state and federal statutes. The criticism that the costs to raise a child cannot be decided until a standard of living is established is correct but the existing method of combining the parental incomes to estimate the allocation to the child already sufficiently serves this purpose. Any attempt to use a standard of living benchmark to establish child support awards would require research to demonstrate how a child's needs are correlated with benchmarks across the income continuum. The method employed by the GRC is manual and relies on eyeballing the amounts until they look correct based upon their own value judgments. The sum total of these issues combined with the GRC conflict of interest represents far too much risk to implement COBS in Arizona.

²⁸ ARS 38-502: "Substantial interest" means any pecuniary or proprietary interest, either direct or indirect, other than a remote interest. "Make known" means the filing of a paper which is signed by a public officer or employee and which fully discloses a substantial interest or the filing of a copy of the official minutes of a public agency which fully discloses a substantial interest. The filing shall be in the special file established pursuant to section 38-509.

ARS 38-503: A. Any public officer or employee of a public agency who has, or whose relative has, a substantial interest in any contract, sale, purchase or service to such public agency shall make known that interest in the official records of such public agency and shall refrain from voting upon or otherwise participating in any manner as an officer or employee in such contract, sale or purchase. B. Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision. Ira Ellman led the Interim Committee and the Pima County Jury Pool survey which provided the GRC with critical data that was used to establish key calculations within COBS. Ira Ellman voted to remove Income Shares and replace it with COBS, the model that he built with GRC based upon ideas that he published ten years ago. Ira Ellman has already started speaking about COBS at conferences even before it has been adopted in Arizona. Tara Ellman created analysis tools that established the foundation upon which the GRC would build COBS. The GRC admits that Tara Ellman has given free use to [only] the state of AZ of at least one tool that she built while contributing to the GRC. This action appears to indicate that members recognized that a product of marketable value was produced by Tara Ellman in her role in support of COBS and that she owns the rights to distribute it for profit if she chooses. This also appears to indicate that the GRC, including its chairman, recognize the appearance of a conflict of interest and took steps to respond to this potential objection outside of the requirements prescribed by ARS 38-503.

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Center for Policy Research (CPR) provided recommendations to the GRC to address parenting adjustment concerns. It is recommended that the legislative child support committee review these recommendations in conjunction with the proposed cost of living adjustments proposed by CPR. It is further recommended that this committee initiate an independent review of the CFDS analysis to better understand how parent's net incomes affect their ability to provide for children's needs. One outcome from this analysis could be consideration of updating the self-support reserve for low income parents to help protect children from poverty conditions with either parent.

Author's Note: This author has made the following information available to any interested person or agency: data, assumptions, analysis findings, recommendations or any other information that may assist in validating the basis or impact of current or proposed child support guidelines for the state of Arizona. This invitation for review, criticism and collaboration has been directly extended to the GRC on multiple occasions in an effort to provide the input of a professional with extensive experience in developing complex financial models – no response has been tendered by the GRC. It is estimated that child support orders transfer nearly \$2 Billion between parents in Arizona each year. An independent review by a disinterested professional or agency with specific experience in child support economics is highly recommended.

Section I: Background

The current Child Support Guidelines Review Committee (GRC), formed under Administrative Order 2008-22, has been given the directive to assess the existing Arizona child support guidelines and report on the advantages and disadvantages of adopting a new child support methodology. The GRC submitted a recommendation to the Arizona Judicial Council (AJC) on March 25, 2010 to discontinue use of the present Income Shares model and adopt a model that had been developed by the members of the GRC called Child Outcome Based (COBS). This model is based upon an opinion paper titled “The Theory of Child Support” written by Ira and Tara Ellman. Ira Ellman is a voting member of the committee and Tara Ellman, Mr. Ellman’s wife, built analysis tools and performed a wide variety of analytical and data validation functions for the committee. According to the GRC, COBS was built in response to the perceived inadequacy of the existing child support guidelines. COBS is fundamentally different from each of the three primary child support models used by most states (Income Shares, Percent of Obligor Income and Melson) as it does not consider the estimated expenditures of raising children to compute support order amounts. Instead, as prescribed in Mr. Ellman’s theory paper, COBS uses a standard of living benchmark to determine child support awards in order to narrow the income gap to benefit lower earning custodial parents and under certain conditions, lower earning non-custodial parents.

No public membership was offered to Arizona citizens to serve on the GRC. There are no links to the GRC website from the AZ DES website, the current child support calculator on the AZ Supreme Court website, or any other official website that the general public would be likely to visit. As such, the charter, activities, and recommendations of the GRC, while published on the GRC website, are not known to the public. Simply stated, the public has no knowledge that a recommendation has been made to discontinue using the existing child support calculator and adopt the new COBS model. Furthermore, the public does not know that substantial changes to child support amounts could be coming that may result in very serious financial and social consequences to a material percentage of the population.

Section II: Arizona Case File Data Analysis

Scientific Validation of Underlying Child Support Perceptions and Assumptions

Theories are difficult to challenge because they are often based upon belief systems, not scientific evidence. This holds true with ‘The Theory of Child Support’ by Ira and Tara Ellman, the blueprint for COBS, because the underlying assumptions, order amounts and social impacts have not been empirically measured or tested. Therefore, any debate, without some level of scientific validation, will simply result in conjecture.

To address this issue, a scientific methodology needs to be established in order to fundamentally:

1. Test the GRC’s basic assumptions regarding the adequacy of existing Income Shares
2. Provide a comparison of existing Income Shares to the proposed COBS order amounts and assess the expected impact on the public.
3. Compare existing Income Shares and proposed COBS order amounts to the order amounts in other states. This will provide an additional ‘sanity check’ to aid in the overall evaluation.

In accordance with these objectives, the 2007 Arizona case file data sampling (CFDS) prepared by Center for Policy Research (CPR) was used to represent the public for this exercise. The CFDS contains 567 case file samples; this is the same data source that has been used by the GRC to prepare their forecast of the impact of COBS on the public²⁹. This author employed a comprehensive analytical approach using the CFDS to compute precise COBS order amounts for every case, calculate tax amounts using dual source validation, incorporate a measure of family size factors as prescribed by Dr. Sanford Braver and Dr. David Stockburger³⁰ and create a variety of ratios and segment indicators for reporting purposes. This approach resulted in a 210 x 567 data set that was used to generate the findings listed below. In order to compare the state support amounts, Ten (10) standard scenarios were tested using each state’s official online child support calculator or written guidelines. Data points were captured for 36 states, including both Income Shares and COBS in AZ. A cost of living (COL) factor was also applied to the support amounts to normalize the

²⁹ “The Center for Policy Research provided the data in an electronic form accessible by other researchers, which allowed Tara Ellman to analyze data from the case file review report”. Final Report and Recommendations of the Child Support Guidelines Review Committee (3/25/2010)

³⁰ Braver, S & Stockburger, D. Child Support Guidelines and the Equalization of Living Standards, *see supra* 2

relative value of each state's support amounts for comparison purposes. Detailed information regarding the methodology, sources and other considerations is contained in Appendix A: Methodology.

Analysis Findings

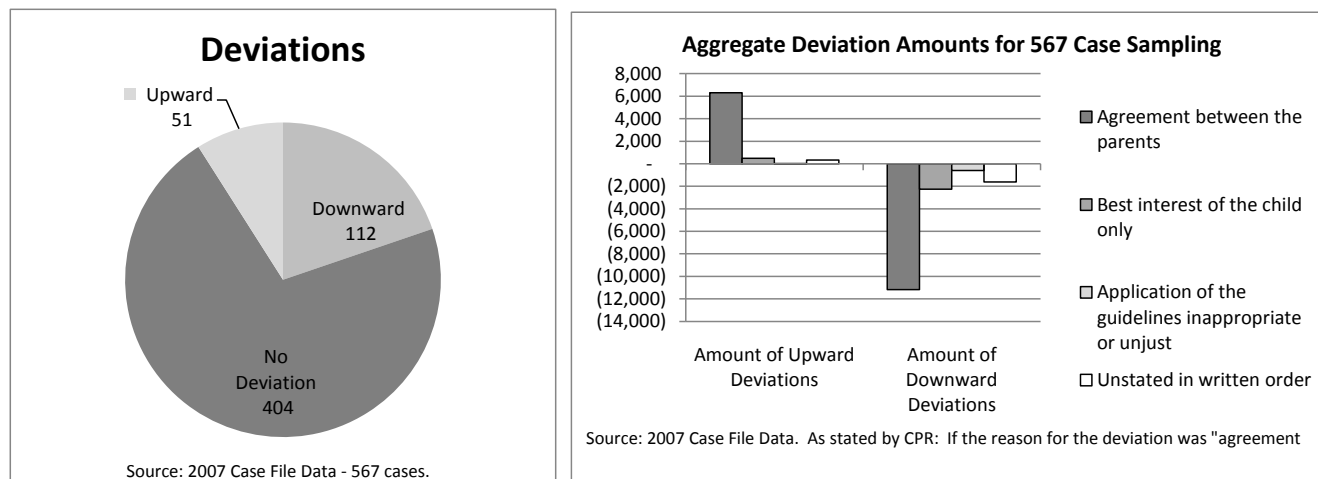
1. Is Existing Child Support Inadequate?

- **GRC: Yes** – The GRC cites a '**perceived inadequacy**' in support amounts³¹. No evidence or measure of existing child support's inadequacy has been offered.
- **Analysis:** Existing child support appears to adequately provide for custodial parents but does not protect the child from potential poverty conditions with low income non custodial parents.

Deviations

The first step in assessing the adequacy of child support should be to analyze the case deviations. The deviations associated with the current AZ Income Shares model suggest that if anything, child support amounts are too high since there are twice as many downward deviations as there are upward deviations. The average upward and downward amounts per case are almost exactly the same at \$141 and \$142, respectively.

Graph 1: Deviations Stratified by Upward/Downward & Reason Type

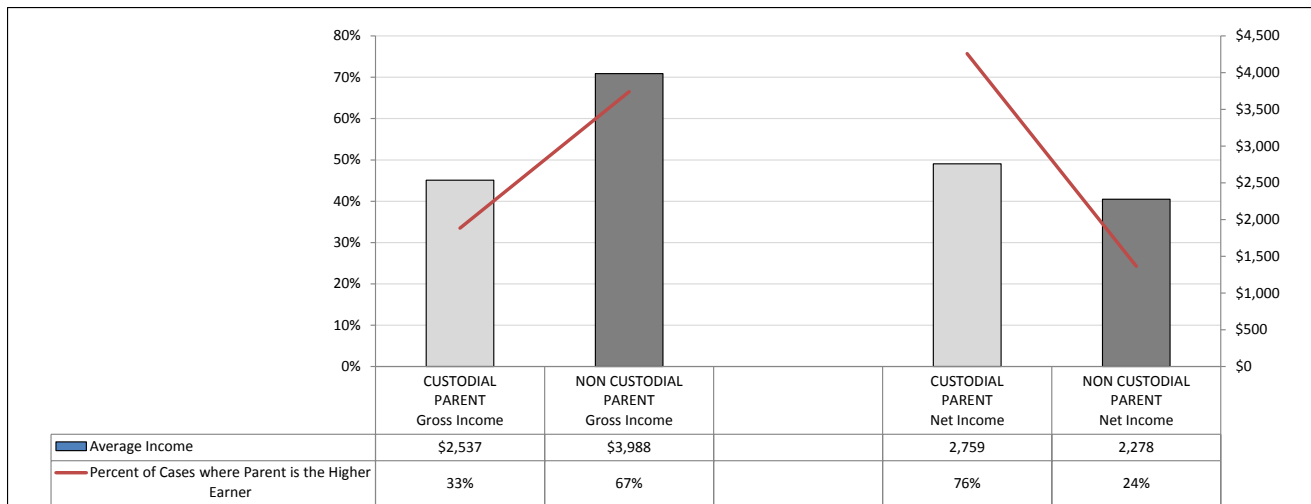


Net Income

Another barometer of parental financial well being is to compare their net incomes after taxes and child support to assess the resources available to support themselves and their children. The CFDS was used to measure the estimated taxes and apply support payments for existing AZ Income Shares and proposed COBS for every case using specific incomes, parenting days, number of children and extra expenses (see Appendix A: Methodology for more details). The transformation from gross income to net income for the parents was shocking. For existing AZ Income Shares, NCPs earn a higher gross income than their matched CP in 67% of cases but after taxes and child support, the situation inverts and the CP becomes the higher net income earner in 76% of cases:

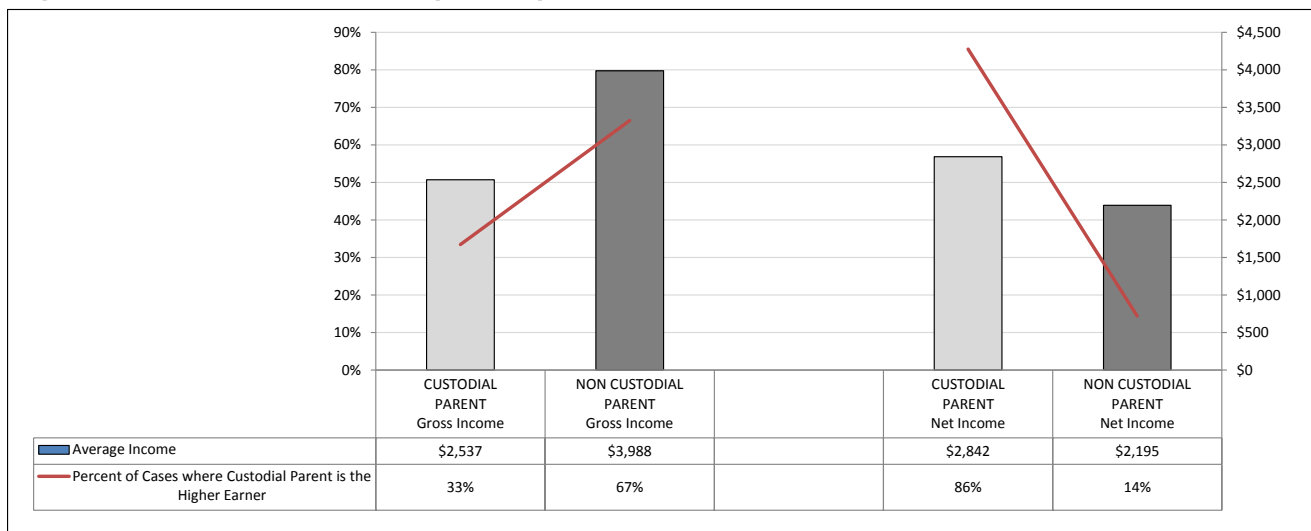
³¹ Previous reviews identified concerns regarding the **perceived inadequacy** of child support in cases where there was a great disparity in earnings between the parents. The inadequacy of the support order was exacerbated as parenting time increased toward an equal allocation of parenting time (emphasis added). See Report to AJC *supra* 1

Graph 2: Parental Gross Incomes compared to parental Net Incomes after Current Income Shares



After applying the COBS SOL methodology, this inversion becomes even more dramatic. COBS results in nearly 9 of every 10 CPs earning a higher net income than their matched NCPs. Furthermore, the gap between average net incomes grows by 35% from \$481 for Income Shares to \$647 for COBS:

Graph 3: Parental Gross Incomes compared to parental Net Incomes after COBS



Standard of Living

The next sequence in this process is to apply a Family Size Factor (FSF) to the parental net incomes to account for the differences in the number of adults and children supported within each household.³² NOTE: This measurement is of limited value in measuring the majority of post divorce households as it purports to measure the standard of living within the household yet it does not include the incomes and expenses of other members of each household who are not the natural parents in each case (including new spouses).

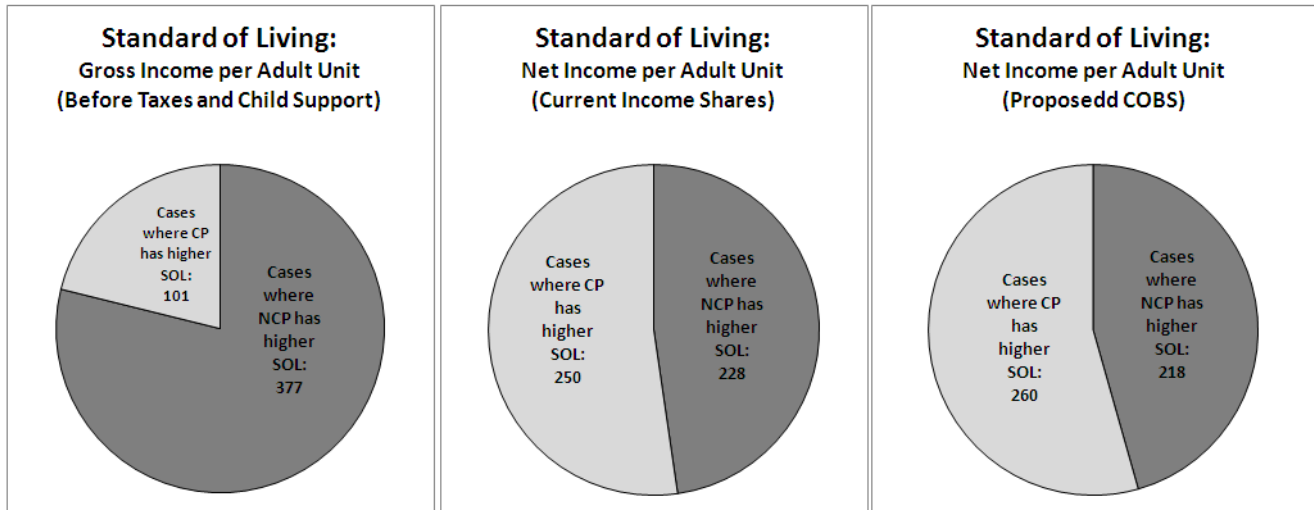
Consistent with the prior findings of Stockburger and Braver³³, the analysis of CP and NCP cases confirms that CPs under AZ current Income Shares already have a higher SOL than their matched NCPs in **58% of cases**³⁴. This is

³² This author does not intend to legitimize a standard of living equalization concept in calculating child support awards but instead has used this benchmark as a comparison to assess the relative improvement in standard of living from a starting point of parental gross incomes to a final point of after tax and after support payment parental net incomes.

³³ "we believe our results suggest that under current child support guidelines, the majority of CPs currently have higher SOLs than their matched NCPs". Braver, S & Stockburger, D. *see supra* 2

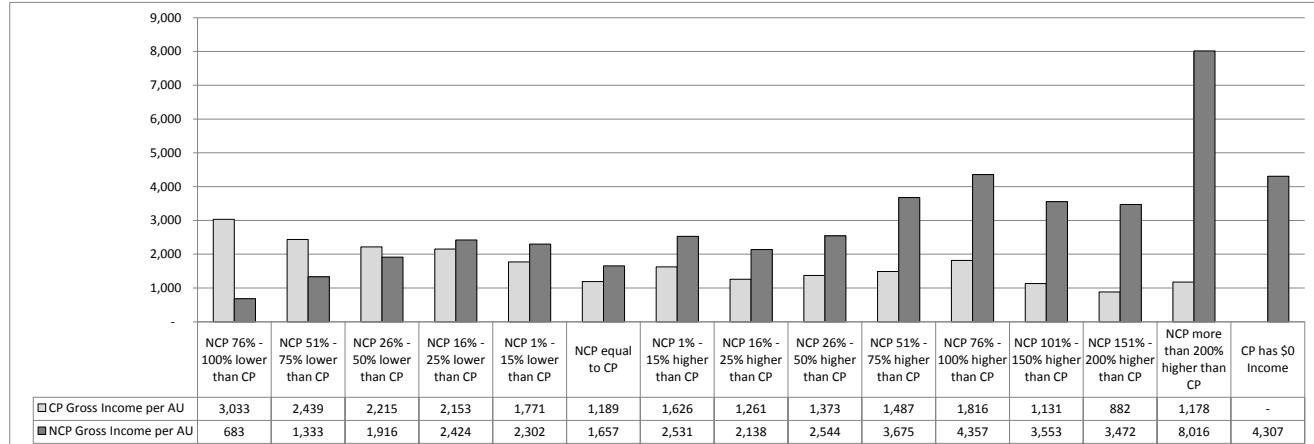
particularly noteworthy because **NCPs have a higher starting SOL** (gross income before taxes and child support payments) than their matched CPs in **80% of cases**. The GRC assumes that support amounts are inadequate and through COBS, further add to the SOL inversion between parents. Graph 4 below illustrates the effects of taxes and child support on parental SOL's:

Graph 4: Gross Incomes and Net Incomes per Adult Unit



The review of shifts in parental SOL's helps to explain the equalizing nature of taxes and child support in a general sense. A closer look at parental gross income segments unveils more data to explain where the SOL transition between CPs and NCPs starts to occur:

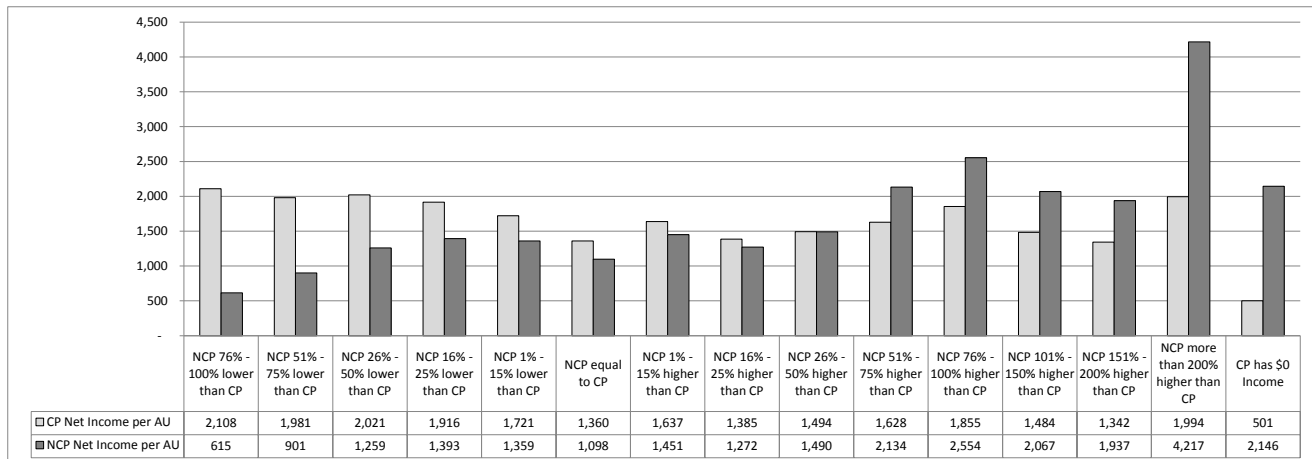
Graph 5: Baseline Standard of Living: Gross Income per Adult Unit (GIAU) for CP and NCP



The difference between gross income per adult unit (GIAU) between CPs and NCPs may explain the apparent public perception that non custodial parents live much better than custodial parents after divorce. The affect of the FSF adjustment on the starting gross incomes further exaggerates the income gap. The GRC chairman has repeatedly cited a scenario similar to the figures in Graph 5 where the NCP is more than 200% higher than the CP as evidence that children today live in poverty while their NCP lives in luxury. If gross incomes were the same as net income, this statement might be true. However, once taxes and existing child support transfers are applied, the picture changes dramatically and so does the rationale that existing Income Shares does not provide for children in the scenario referenced by the GRC chairman:

³⁴ 478 cases in CFDS of unequal custody, equal custody cases are not included in this analysis. SOL measured as net income per adult unit (NIAU). Equal custody NCPs are generally more negatively impacted by COBS due to the effect of existing parenting time adjustments.

Graph 6: Net Income per Adult Unit (NIAU) for CP and NCP - Existing AZ Income Shares

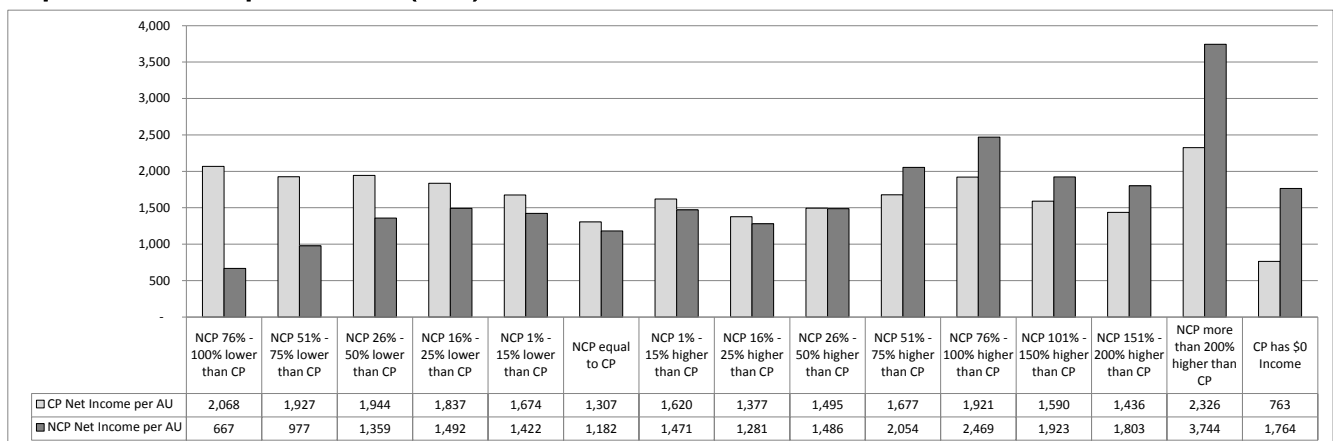


This comparison reports that CPs enjoy a higher SOL than NCPs well into the range where the NCP earns more than 50% higher gross income than the CP on average. After this point, in the ranges where the NCP earns between 51% to 200% more gross income than the CP, the SOL remains within an 18% - 24% average tolerance between the parents. At the highest gross income disparity where the NCP earns more than 200% higher than the CP (more than 3X the CP's income), the SOL difference doesn't exceed 50% on average for this segment. In cases where the CP earns \$0 income, the disparity is greater than 50% but it is assumed that other sources of income are involved in these cases and/or public assistance so it is difficult to draw any conclusions about CPs in this category.

It is important to shift our attention to the left hand side of Graph 3 where the NCP earns less than the CP. These NCPs start with lower gross incomes and their situation worsens after taxes and child support relative to their matched CPs. It should also be recognized that these are not just low standards of living compared to their matched CPs, these are low standards of living in real dollar amounts which does translate into a potential poverty environment for their children. This is vastly different from the average standards of living that CPs experience when their matched NCP earns much higher gross income. In fact, CPs who earn 200% lower incomes than their matched NCPs have the highest standards of living of any other segment except for the highest earning CPs.

Now that we have examined how the existing AZ Income Shares guidelines provide for CPs and NCPs, let's assess how COBS compares to the gross income baseline and the existing child support amounts in Graph 7:

Graph 7: Net Income per Adult Unit (NIAU) for CP and NCP under COBS



Many of the same themes are carried forward from existing AZ Income Shares to COBS. The CP still continues to maintain a higher standard of living well into the NCP higher earner range. Since COBS uses a SOL benchmark to establish child support awards, we also observe a tightening of the income per adult units into the higher range of NCP

earners. In the ranges where the NCP earns between 51% to 200% more gross income than the CP, the NIAU is reduced to only a 10% - 17% tolerance between the parents on average. CPs in the range where the NCP earns the highest amounts now receive significantly more than even the highest earning CPs as the difference is reduced to 34% on average. It is very important to note that the shift from a 50% NIAU in Income Shares to a 34% NIAU in COBS comes at a high cost to the NCPs in this segment. This shift results in a 65% increase in child support and requires an additional 10% of NCP net income on average. Additionally, the CP NIAU for this segment demonstrates that child support is not needed to bring children out of poverty but instead provides the highest SOL than any other segment for these CPs. The other theme that is repeated in COBS is that the lowest earning NCPs are by far the parents most likely to live in poverty and expose their children to poverty. COBS does not protect the outcome of children in these scenarios.

Methodology Note: This author believes the expense allocation methodology between CP and NCP most likely underestimates NCP financial outlays and therefore overstates the NCPs standard of living in a majority of cases. The parental expense allocation methodology suggested by Braver and Stockburger in *Equalization of Living Standards* was used in order to maintain consistency with the findings of these authors. There are elements of this methodology that do not account for duplicative and unduplicated expenses incurred by the NCP. For example, the prescribed calculation does not allocate any unduplicated expenses to the NCP (i.e. uniforms, memberships, lessons, etc.), all of these expenses are assumed to be paid 100% by the CP. Another example is that a NCP does not incur any fixed duplicated expenses for their children at low levels of visitation but that is also inconsistent with reality and with the findings of Fabricius and Braver in 'Non-Child Support Expenditures on Children by Nonresidential Divorced Fathers'³⁵.

IMPORTANT: As previously noted, all of the analysis above is of limited value as it attempts to measure the standard of living and income per adult unit without considering that in most situations, at least one of the parents will remarry or cohabitate. **The omission of other spouses' income in this analysis INVALIDATES of all SOL calculations.** This fundamental truth is even recognized by Professor Ellman.³⁶ In addition, the goal of child support is not to equalize incomes or standards of living, it is to provide for the needs of children in post divorce families. If the court deems that it is necessary to address a standard of living disparity between the parents, this gap should be narrowed using spousal maintenance or in some cases, a deviation to child support³⁷. The next item in this section addresses the concern that COBS replaces the need for spousal maintenance and allows to receiver to bypass qualification criteria under these payments.

³⁵ "The current findings suggest that the typical assumptions about the economics of noncustodial fathers may simply be wrong. The noncustodial fathers in this study generally did not have extraordinary amounts of visitation...Nevertheless, many fathers apparently did not refrain from providing direct financial support to the child over and above child support payments. Overall, for example, 55% of noncustodial fathers whose children lived primarily with their mothers nonetheless provided a bedroom for their children in their homes." Fabricius, W & Braver, S.; *Non-Child Support Expenditures on Children by Nonresidential Divorced Fathers*.

³⁶ For example, the income of a custodial mother's new husband will almost always improve his stepchild's living standard, and the income of the support obligor's new spouse may improve the obligor's living standard, and thus the obligor's capacity to pay support. **A sensible analysis of child support policy must take the situation of the whole household into account.** (emphasis added). Ellman, Tara and Ira, *see supra 6*

³⁷ If greater equalization of living standards is desired by decision- or policy-makers, **there is another mechanism of income transfer for divorced or separated families designed precisely for this purpose: alimony.** See Braver and Stockburger *supra 2*

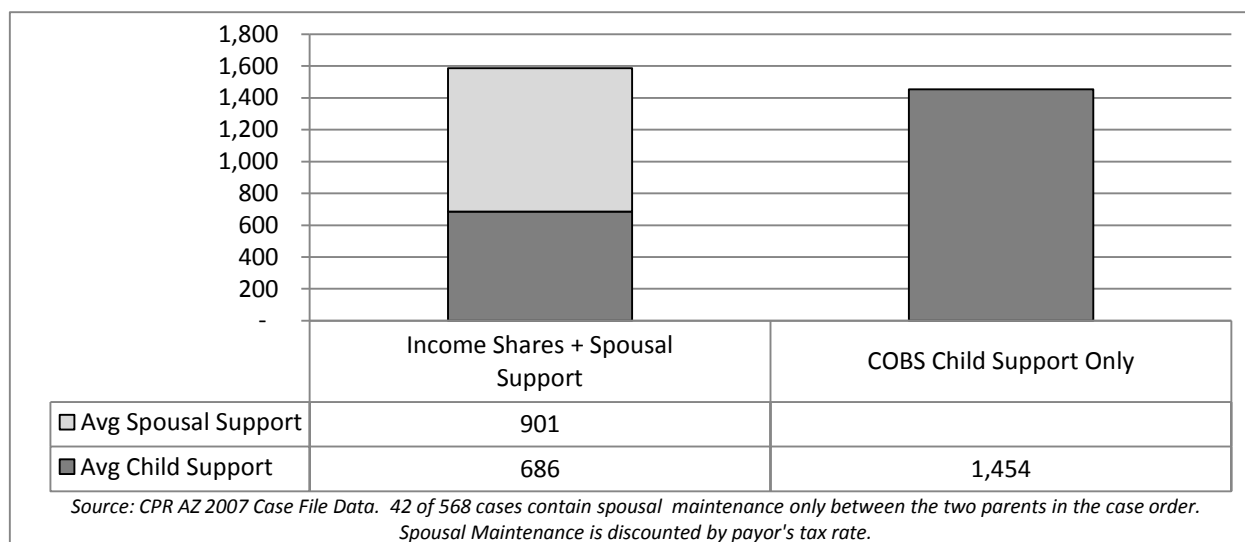
2. Does COBS include hidden alimony?

- **GRC:** No official statement on record from the GRC
- **Analysis:** Yes, an analysis of the 42 cases from the CFDS that contain spousal support indicates that on average, COBS amounts are equivalent to 91% of the combination of existing child support and alimony COMBINED.

Spousal Maintenance

Several experts in the field of child support have stated that any attempt to apply a standard of living method to child support would automatically include some allocation of hidden alimony³⁸. There has not been much recent discussion on the topic since no state has seriously considered this concept since Professor Ellman reported it for the ALI in 2002. Since the core objective of COBS is to set child support amounts such that parental standards of living are close to equal, it stands to reason that existing cases with spousal maintenance would tend to fall in the higher range of the NCP gross income disparity section. Of the 42 cases in the CFDS where the 'Type_Adj' was equal to '1' denoting an adjustment to gross income for the purpose of spousal maintenance only, 24 cases (57%) had NCPs who earned more than 200% more than their matched CP. The balance of the records remained in the high region of this segmentation scheme. As discussed in the section above, these segments have the largest support increases under COBS. It is also important to mention that less than 10% of all cases in the CFDS had any form of spousal maintenance yet the COBS SOL methodology indiscriminately applies this concept to all support cases except to those of low earning NCPs. Graph 8 below illustrates how COBS not only includes some hidden alimony, it actually includes almost the full amount of alimony on average for these cases:

Graph 8: COBS Support Amounts = Existing Child Support + Spousal Maintenance



COBS Usurps the Purpose of Spousal Maintenance

According to ARS 25-319, spousal maintenance may be awarded for any of the following reasons:

1. Lacks sufficient property, including property apportioned to the spouse, to provide for that spouse's reasonable needs.
2. Is unable to be self-sufficient through appropriate employment or is the custodian of a child whose age or condition is such that the custodian should not be required to seek employment outside the home or lacks earning ability in the labor market adequate to be self-sufficient.

³⁸ "Moreover, to the degree that any guideline amount exceeds the (proportionate) cost of the actual costs of raising the child, the guideline automatically contains hidden alimony." See Gay, R. (2002) Additional Scientific Proof that Child Support Awards are Too High. "The problem is that Blumberg then proceeds to seek a "supplement" to raise the standard of living of the custodial parent. All of this supplement is disguised alimony" (emphasis added). Child Support at a Crossroads: RONALD K. HENRY When the Real World Intrudes Upon Academics and Advocates, 1999 Child Support Symposium, Vol. 33 No. 1 1999

3. Contributed to the educational opportunities of the other spouse.
4. Had a marriage of long duration and is of an age that may preclude the possibility of gaining employment adequate to be self-sufficient.

If spousal maintenance is awarded, the following relevant factors must be considered:

1. The standard of living established during the marriage.
2. The duration of the marriage.
3. The age, employment history, earning ability and physical and emotional condition of the spouse seeking maintenance.
4. The ability of the spouse from whom maintenance is sought to meet that spouse's needs while meeting those of the spouse seeking maintenance.
5. The comparative financial resources of the spouses, including their comparative earning abilities in the labor market.
6. The contribution of the spouse seeking maintenance to the earning ability of the other spouse.
7. The extent to which the spouse seeking maintenance has reduced that spouse's income or career opportunities for the benefit of the other spouse.
8. The ability of both parties after the dissolution to contribute to the future educational costs of their mutual children.
9. The financial resources of the party seeking maintenance, including marital property apportioned to that spouse, and that spouse's ability to meet that spouse's own needs independently.
10. The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment and whether such education or training is readily available.
11. Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.
12. The cost for the spouse who is seeking maintenance to obtain health insurance and the reduction in the cost of health insurance for the spouse from whom maintenance is sought if the spouse from whom maintenance is sought is able to convert family health insurance to employee health insurance after the marriage is dissolved.
13. All actual damages and judgments from conduct that results in criminal conviction of either spouse in which the other spouse or child was the victim.

Clearly, spousal maintenance has much different qualification criteria from that of child support. The most relevant perhaps is that under ARS 25-327: "Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated on the death of either party or the remarriage of the party receiving maintenance." Spousal maintenance is designed to address standard of living differences between formerly married people until a new spouse assumes the role of providing for the receiving spouse. However, under COBS, this concept is ignored and child support assumes the purpose of providing for the receiving spouse under the guise of providing for the child. As previously mentioned, when a parent remarries, their standard of living will change as well – such changes in household standard of living cannot be measured under child support because a stepparent cannot be held financially responsible for a child according to state and federal statute. This fundamental disconnect **INVALIDATES** the COBS methodology because it requires additional information to measure standards of living correctly but the information is prohibited to be used for such purposes.

3. Does COBS result in an equalization of incomes and/or standards of living?

- **GRC: No** – “Those who oppose the method continue to misstate that the goal of COBS is to equalize the income in each household. *They have failed to identify even one example in which this occurs and have failed to cite any provisions set forth in the methodology that supports this claim.* Despite comprehensive discussion, the claim continued to be asserted without any foundation. As such, no action could be taken as the underlying premise asserted is without basis.”
- **Analysis: Yes** – as described in detail in item 1 in this section, high disparity differences in income are not only equalized in some cases but overall, CPs are left with higher net incomes than NCPs in 89% of the cases. A list of actual cases has been presented in Table 1 below to demonstrate how COBS equalizes incomes of parents with high gross income disparities.

Table 1: Income Equalization Under COBS – 10 examples

Case ID	NCP Gross Income	NCP Adj Gross Income	COBS Order Amt	NCP Tax Amt	Ordered Expenses	NCP Net Income	CP Gross Income	CP Adj Gross Income	COBS Order Amt	CP Tax Amt	Additional Expense	CP Net Income	Gross Income Disparity	Net Income Disparity
31	4,472	3,892	(590)	(851)	(228)	2,223	2,650	1,911	590	(231)	(172)	2,097	69%	6%
47	4,094	4,094	(815)	(895)	(34)	2,349	1,170	1,170	815	348	(21)	2,313	250%	2%
62	3,640	3,640	(537)	(796)	(43)	2,264	1,733	1,733	537	28	(32)	2,267	110%	0%
306	5,250	4,146	(880)	(1,031)	(9)	2,227	1,387	950	880	283	(5)	2,108	279%	6%
350	4,787	4,787	(1,022)	(1,190)	(205)	2,370	1,014	1,014	1,022	302	(111)	2,226	372%	6%
413	7,083	7,083	(1,188)	(2,032)	(977)	2,886	2,400	1,911	1,188	147	(514)	2,732	195%	6%
448	10,142	7,670	(1,905)	(2,420)	(214)	3,131	-	1,500	1,905	-	(126)	3,279		-4%
632	6,928	6,928	(1,517)	(1,987)	(146)	3,278	1,600	1,600	1,517	123	(84)	3,156	333%	4%
674	7,143	6,749	(1,529)	(1,936)	(24)	3,260	1,000	1,394	1,529	459	(13)	3,368	614%	-3%
684	4,333	4,333	(968)	(947)	(179)	2,238	1,656	1,299	968	21	(121)	2,168	162%	3%

4. How will COBS affect the public?

- **GRC:** *“For the majority of people in Arizona, they’re not going to realize a huge change in their child support”, “...the system is fair, and the majority of parents won’t notice much of a difference in the payments they make, or the payments they receive.”*³⁹
- **Analysis:** Child support amount changes from COBS, as measured in dollar change amounts, will materially impact at least **41%** of the public that pays or receives child support.

Basis for Measurement

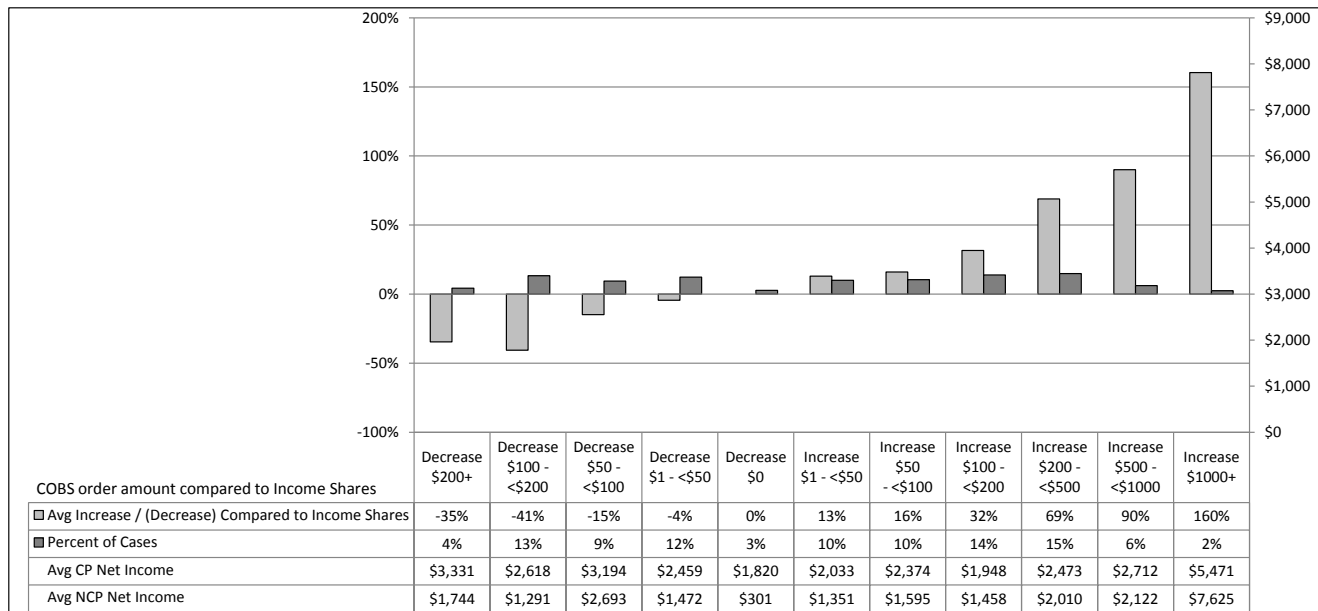
Gauging the impact of a financial change to another person can be very difficult because it requires a basis from which to objectively evaluate the impact of the change. Whatever method is used will be subject to the personal perceptions of those affected by the change so it is important to consider the measurement rationale in the context of announcing and executing the changes. The GRC has most often cited the COBS estimated payment change in terms of the new payment as a percentage change from the existing payment. They have often minimized the changes by stating that some large percentage changes result from a starting payment of \$20 so any upward or downward change is relatively inconsequential.

The GRC’s estimated impact figures rely upon a flawed measurement approach. The COBS payment impact figures produced by Tara Ellman relies upon an average scenario of: 1 child and 100 parenting days for the midpoint of the gross parental incomes in \$500 increments from \$0 to \$9,500 for 419 cases from the CFDS. Applying an average scenario to these parental income combinations to estimate the payment change dangerously miscalculates the true impact to the actual 567 cases since it misses the impact of variables such as high parenting days, low parenting days, multiple children, etc. Omitting deviations from consideration in this analysis is also flawed because it assumes that all parents with deviations today will have deviations under COBS as well.

This author has applied a different approach to this task. Instead of using payment percent changes as the segmentation indicator to measure those affected by COBS, the dollar amount increase or decrease was used to create segmentations that would be assumed to be unexpectedly large or small to each group. Furthermore, the change in payment amounts is calculated on the actual circumstances of each case including the impact of the specific income amounts, the custody agreement and assigned custodial parent, the total number of children and the actual parenting days. These are the factors needed to correctly calculate child support in COBS; the current Income Shares order amounts are included in the CFDS. The existing Income Shares order amounts were adjusted to remove any allocation of extra expenses and then those expenses were reallocated with the assumption that neither parent was currently paying these expenses. This approach still relies on subjective assumptions and averages and the logic could be attacked by a parent who is so close to the edge that an additional \$90 per month in child support will send him or her into bankruptcy. The results of this analysis are presented in Graph 9 below:

³⁹ Jennifer Liewer, spokesperson for the Supreme Court. Statements made to KPHO Channel 5 on 9/21/2010.

Graph 9: Financial Impact of COBS Segmented by \$ Amount Changes



It was decided that those parents who experienced a decrease of more than \$100 would consider the changes from COBS to be a serious impact. This was due in part to the expectation that child support doesn't normally go down for CPs (it usually goes up) and the relatively low average CP net income of \$2,618/mo. A change of \$150, the midpoint for this section would be 6% of net income – greater than the average total household savings rate. On the other end of the scale, it was assumed that it would be a serious impact to those who experience an increase of \$200 or greater. The average net income for NCPs in this initial range is only \$2,010, therefore, a change of \$200 - \$500 as a substantial change is an easy argument to make. The same is true for the following larger change segments. Even for those parents who earn \$25,000 per month, a change of \$3,000 per month with no notification or explanation of the need for this increase would be expected to be considered a serious impact.

The fact remains that the CFDS was not created for the purpose of assessing all of the impacts associated with the introduction of an entirely new child support model and is almost certainly of insufficient size to test all of the complex hypothesizes presented by the GRC and by this author as well. **This important fact needs to be clearly disclosed to all decision makers as they will be held responsible for the unintended consequences that may arise from the implementation of COBS.** As an example, if we asked a man by a river if it was safe to cross with our children, he might respond that the average depth was only 12 inches and the average speed of the current was only 1 mile per hour. Those facts, with no other disclosures, may leave us confident that we can cross safely with our children. But what if the man told us that the average depth was 12 inches but that's because its 6 inches deep to the middle where it drops to 6 feet deep for a length of 3 yards. If he further adds that the current travels at 10 miles an hour in the center where it is deep, that additional information would help us to better assess the situation and make informed decisions. This analogy is similar to COBS because even if the majority of the public will not notice a huge change in their child support payments, a very debatable statement, it also means that **there are some members of the public who will experience a huge change in their child support payments.** The GRC and Supreme Court were given opportunities to make this disclosure to the public but instead have chosen to convey a minimized message of impact and in so doing, there are parents and children who will be swept away by a fast moving current when COBS is implemented. It is very disappointing that the GRC and the Supreme Court failed to make these disclosures to the public, even when the public brought the media to the doorstep of the AZ Supreme Court to comment on COBS.

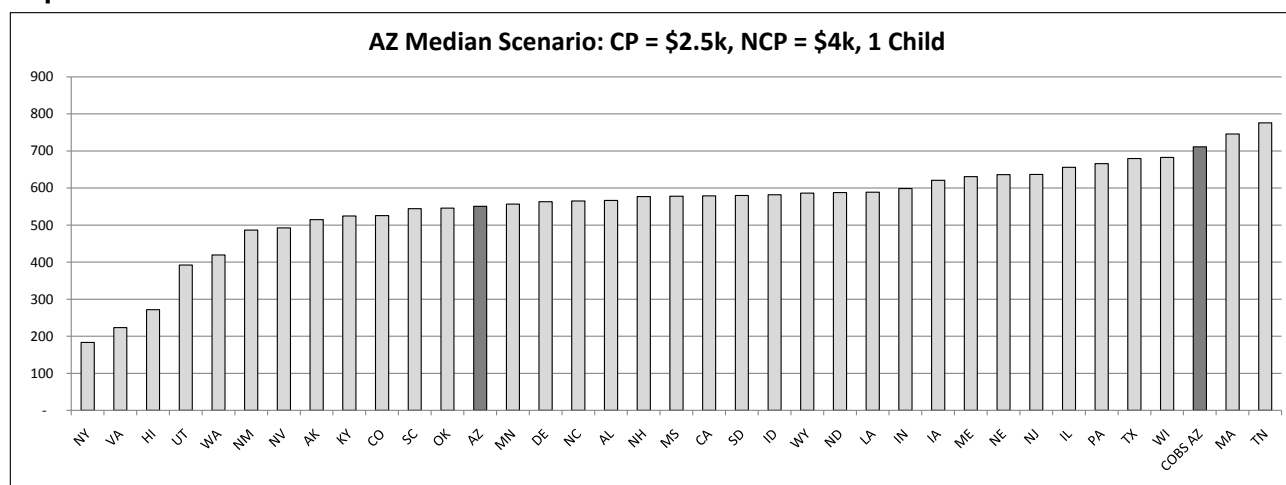
5. How does COBS compare to support amounts in other states?

- **GRC: “Across the board...in no situation were we [COBS] the highest in the country”.⁴⁰**
- **Analysis: COBS generates support amounts that exceed every other state in the nation in a large number of moderate and high disparity income scenarios**

The Chairman of the GRC explained in the June 24th meeting with the AJC that the GRC committee compared COBS to other states throughout the process of building COBS. He indicated that it was to ensure that the committee was not creating an outlier and further explained that the committee used five other states to perform these comparisons. He also stated that the current AZ Income Shares amounts seemed to be in the middle to middle lower end of the spectrum compared to other states. Members of the AJC asked the Chairman to run additional comparisons in that meeting.

This author invested many hours running and recording multiple scenarios for every state that had an official online child support calculator or had manageable written guidelines. In total, 10 separate scenarios were run for 36 different states in order to perform a comprehensive comparison against other states’ child support amounts. Additionally, a cost of living factor was applied in order to normalize the amounts for evaluation between high cost and low cost states (AZ has a 1.00 cost of living (COL) factor so the amounts listed for each scenario do not noticeably change). All comparisons in this report will use the same assumptions of one child and 0 parenting days for each of the different income combinations⁴¹. The gross incomes at the CFDS median was used for the first comparison in Graph 10:

Graph 10: CFDS Median

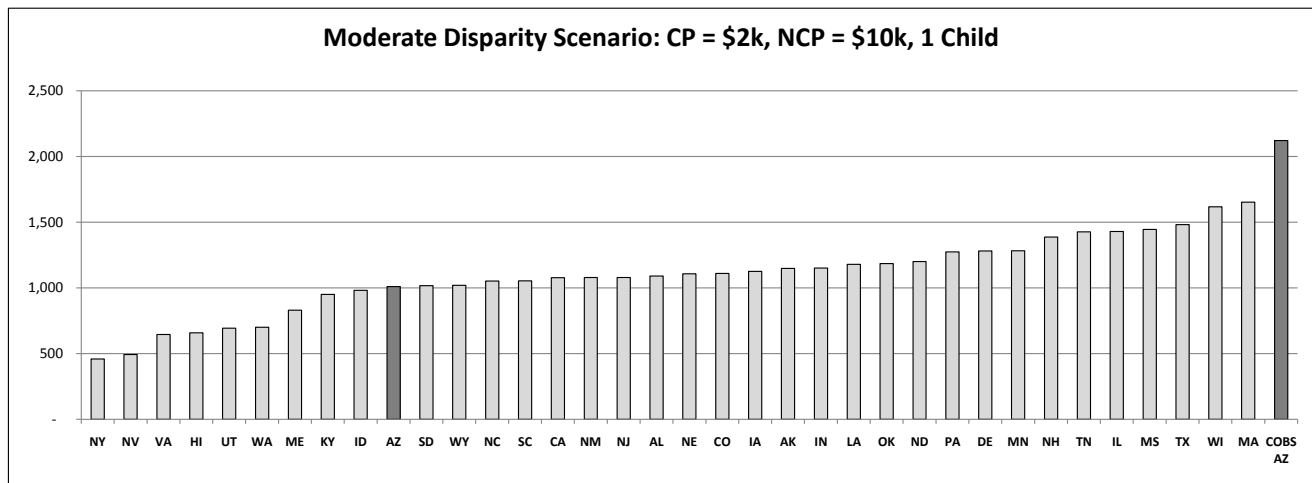


⁴⁰ “We ran calculations against other states, not because we think other states are right or wrong but because you want to know whether you are creating an outlier. And what we found is that under the income shares model, we tended to be middle to middle lower end of the spectrum in terms of child support national average. We used five different states: Washington, Iowa, Wisconsin, Massachusetts, and there might have been one other...We took identical fact situations and just ran the numbers using that state’s guidelines. We found, across the board, that we were in no situation, that we were the lowest in the country nor were we the highest in the country. So this notion of a radicalized approach, I think the radicalized part is that we’re looking at child outcome, that’s the radical concept...we never, on any of these numbers, hit the highest number. So if it is radical, it is certainly not creating an outlier anywhere in any calculation. That’s important to look at because if the comments are nobody else is doing this nationally, we have not created some new system” GRC Chairman Bruce Cohen, AJC meeting 6/24/2010

⁴¹ This scenario was used because some of the models have parenting time adjustments that require a separate method to calculate outside of the online calculator. A blended rate that uses the average between 0 parenting days and 180 parenting days can be calculated to simulate 90 parenting days since the payment amounts for both COBS and AZ Income Shares is linear but the other state comparables have not been tested.

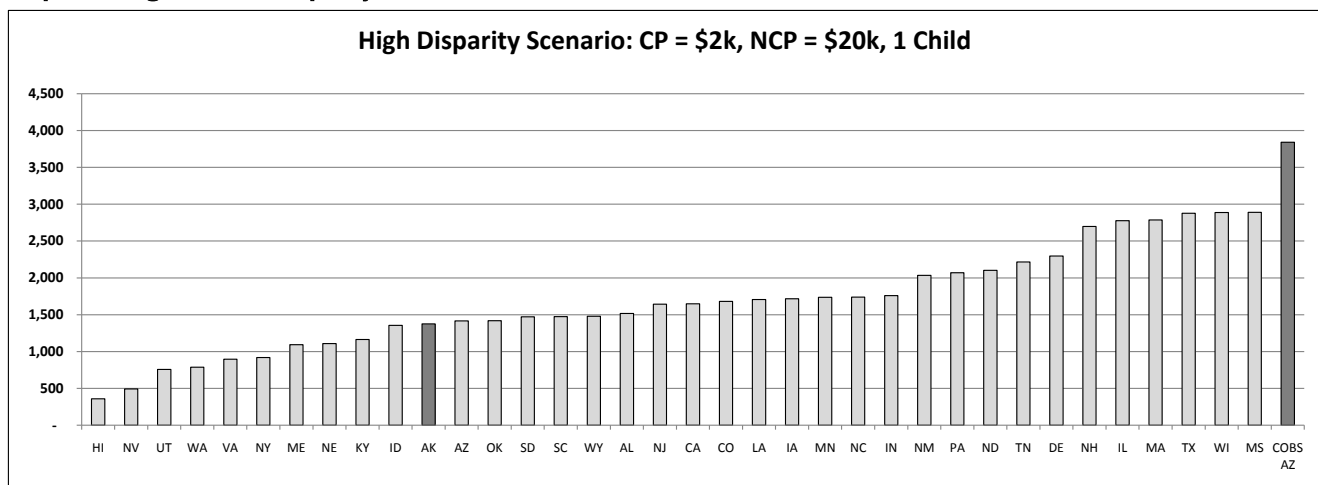
At the median income comparison, the existing AZ amount falls in the lower middle section as reported by the GRC. The COBS amount is ranked third highest behind Massachusetts and Tennessee.

Graph 11: Moderate Income Disparity



At the moderate income disparity mark, the current AZ Income Shares amount slides three positions to the left but still remains within the majority of consistent amounts that range from Kentucky to Minnesota. On the other end of the scale, contrary to the statements from the GRC, COBS becomes an obvious outlier returning amounts approximately 28% higher than the next highest state of Massachusetts.

Graph 12: High Income Disparity



The current AZ Income Shares amount remains steady in the lower middle compared to other states. This comparison exposes the dramatic support amount differences between states, much more than the starting comparison. COBS at this level continues to skyrocket and is now 33% higher than the next highest state of Massachusetts.

The social and financial consequences of producing the highest child support amounts in the country cannot be calculated. For example, it does appear to offer an irresistible opportunity for custodial parents who live in Nevada to consider moving to Arizona. Nevada has woefully inadequate support amounts but a short trip over the state line would set some people up to live comfortably since the AZ support amount for the scenario above is 700% higher. How would children benefit when parents are incited to move them away from their other parent in order to leverage a child support guideline windfall?

6. Does COBS protect the outcome of the child as the name suggests?

- **GRC: Yes** – “The proposed Child Outcomes Based Support model reflects a systematic consideration of the impact of parental separation on the parents and their children to achieve outcomes that protect the financial well-being of the child while remaining fair to both parents”⁴².
- **Analysis: No** - children with low income NCPs will not be protected from gross income disparities – this privilege is reserved for low income custodial parents.

The GRC’s published opinions, directly from Professor Ellman’s theory paper, demonstrates that the focus of protecting a child’s well being is directed to the custodial parent and essentially disregards the child’s experience in the non-custodial parent’s home – particularly if the non-custodial parent has fewer than 120 parenting days.⁴³ The GRC recognizes that “There are circumstances wherein low-income obligors are expected to pay unreasonably high support amounts to high-income custodial parents.”⁴⁴ COBS does provide some relief for parents in these situations but it still does not protect a child from living in poverty with a non-custodial parent and living in luxury with a custodial parent. The fundamental issue lies in the fact that Income Shares manages the extent of the payment division between the parents because it is based upon the estimated costs of raising children. COBS employs the standard of living approach which gives great weight and financial protection to the custodial parent but offers no standard of living protection to the non-custodial parent below 120 parenting days. Since the stakes are much higher with COBS, this creates an extremely dangerous financial incentive for parents to battle for custody and reduce the other parent’s parenting time.

Section III: Professional and Academic Evaluations of Equal Living Standard Concepts

The concept of using a standard of living benchmark to calculate child support was introduced over ten years ago by Grace Bloomberg.⁴⁵ It was also included in the American Legal Institute’s Principles of the Law of Family Dissolution: Analysis and Recommendations in 2002. It appears to have roots in earlier Income Equalization concepts suggested by Isabel V. Sawhill⁴⁶ and Dr. Judith Cassetty⁴⁷ in the 1980’s. These methodologies were fundamentally different from the three most common methods used by states currently (Income Shares, Percentage of Obligor & Melson) since they do not attempt to incorporate the expenses associated with raising children. COBS is built using a standard of living (SOL) benchmark for both parental households to arrive at child support calculations as prescribed in the ALI model.⁴⁸

⁴² Final Report and Recommendations of the Child Support Guidelines Review Committee (3/25/2010). *See supra* 1

⁴³ The child’s financial well-being depends primarily upon the income of the custodial parent, and relatively little on the income of the support obligor. If the custodial parent is poor, the custodial household remains poor even when the income in the noncustodial household is higher. This feature of Income Shares guidelines is the direct result of basing support amounts on marginal child expenditures in intact families. *id*

⁴⁴ *id*

⁴⁵ Grace Ganz Blumberg, Reporter’s Memorandum to The Members of the Institute, ALI PRINCIPLES 1998

⁴⁶ “Implicit in their proposal is the assumption that disposable income be equalized, relative to needs, across split households”. Sawhill, I.V. Child support: the evaded obligation

⁴⁷ “Judith Cassetty pioneered a standard of living equalization method nearly twenty years ago. This method was rejected in all states because equalization of living standards, or equalization of income would provide a margin of alimony or spousal support in many cases”. Gay, R. (2002) Additional Scientific Proof that Child Support Awards are Too High

⁴⁸ “some advocates are attempting to accomplish their goal of equalization of living standards by the more circuitous, and less direct means of disguising it within complicated and opaque child support calculations. Thus, for example, Grace Blumberg (1999), in drafting the American Law Institute’s recommended formula (A.L.I., 2002), calculates a base award to achieve continuity of expenditures using familiar principles, but then adds a “supplement percentage” intended to bring the two households’ standards of living (SOL) into closer agreement.”(emphasis added) See Braver and Stockburger *supra* 2

If these concepts and models have been available for the last 20 years, why has no state ever adopted them?⁴⁹ There is evidence that states are aware of the ALI model but there may be multiple reasons why they reject it⁵⁰. There are several documented critiques of the Income Equalization model and/or ALI Principles model⁵¹ that have offered some good reasons why these models have never been seriously considered for implementation:

1. **Hidden Alimony:** One of the likely reasons is that any transfer of wealth from one parent to another that does not benefit the child would be considered hidden alimony⁵². Since alimony is a separate payment that is designated for the purpose of addressing standard of living disparities, merging this payment into child support would be adverse and in conflict with alimony awards⁵³.
2. **Discourages Workforce Participation:** Transferring income from one parent to another, in some cases in the magnitude of \$4,000 or more per month, can incent the low wage earner to not pursue improvements in his or her work abilities and opportunities⁵⁴. Considering that child support is tax free and that non wage earners require less income to achieve the same SOL as wage earners⁵⁵, a model that intentionally manages the standard of living differences to a narrow gap such as COBS, can reward the wrong behaviors.

⁴⁹ "While the equal living standards model has been widely discussed and is widely preferred by commentators who focus on children's welfare, it has been adopted in no state" Harris L.J., The New ALI Child Support Proposal

⁵⁰ "Legal research was done on a wide variety of issues, including the following: ...federal and Massachusetts child support statutory and regulatory mandates; the similarities and differences between the American Law Institute(ALI) child support formula and the Massachusetts child support formula;... The Task Force's recommendation moves Massachusetts from its position as one of the minority of states that does not base its child support formula on all income of both parents. As a new "income shares" state, Massachusetts will join the majority of U.S. jurisdictions. The growing national trend to income shares is based on a general recognition that children's expenses are based on family lifestyle. In nearly all families, lifestyle depends on all available income. Two working parents are common today in single household families. They are even more common in two household families. Income of two adult workers is often necessary to maintain the family lifestyle. The income shares model recognizes that necessity". Massachusetts Report of the Child Support Guidelines Task Force (10/2008). "Neither model has been adopted and consequently implemented versions of these models are hard to locate. **ALI is more of a 'concept' than an implemented model. Although Ellman is currently trying to get Arizona to do the research to implement his vision**" (emphasis added) Washington Child Support Group, 12/2007: Other states informed of ALI model during guidelines review California 2005 review, Pennsylvania 2008 review.

⁵¹ Corrigan M. (2006) Judicial and Legislative Perspectives: A Formula for Fool's Gold: The Illustrative Child Support Formula in Chapter 3 of the American Law Institute's PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION, Reconciling the Family Critique on the American Law Institute's Principles of the Law of Family Dissolution. See also Braver & Stockburger, *supra* 2

⁵² "Moreover, to the degree that any guideline amount exceeds the (proportionate) cost of the actual costs of raising the child, the guideline automatically contains hidden alimony." See Gay, *Supra v.* "The problem is that Blumberg then proceeds to seek a "supplement" to raise the standard of living of the custodial parent. All of this supplement is disguised alimony" (emphasis added). Child Support at a Crossroads: RONALD K. HENRY When the Real World Intrudes Upon Academics and Advocates, 1999 Child Support Symposium, Vol. 33 No. 1 1999

⁵³ "It has been previously shown that child support awards contain hidden alimony. For a variety of legal and straightforward logical reasons, spousal support should not be provided as part of a child support award. Some advocates have suggested that equalizing the standard of living between two households is a better approach to child support. Judith Cassetty pioneered a standard of living equalization method nearly twenty years ago. This method was rejected in all states because equalization of living standards, or equalization of income would provide a margin of alimony or spousal support in many cases. "It is illegal to include spousal support in a child support award," wrote a Washington State guideline review committee, "because spousal support can be awarded separately when appropriate." (emphasis added) See Gay R. *supra* 33

⁵⁴ " Indeed, to apply blindly the statutory formula to the parties' aggregate income over \$80,000 without any express findings or record evidence of the child's actual needs would constitute both an abdication of the judicial responsibility and a trespass upon the right of parents to make lifestyle choices for their children." See Morgan *supra* 11

⁵⁵ "Most analysts agree that a family experiences costs associated with working which comprise about 30% of total income. In other words, a family of two with \$800 in unearned income enjoys approximately the same standard of living as a wage-earning family of two with 30% more income, or \$1040 a month in earned income" Czapanskiy, K.S. ALI Child Support Principles: A Lesson in Public Policy and Truth Telling

3. **Statutory Issues with Including the Income of New Spouses in HH Income:** Both the Income Equalization model and the ALI model include the incomes of new spouses in each household⁵⁶. However, Arizona “state law does not allow us to consider income from a new spouse”⁵⁷. This is a fundamental issue that conflicts with the aspiration of measuring disparities in post divorce standards of living. As Ira Ellman states in *Theory of Child Support* “the income of a custodial mother’s new husband will almost always improve his stepchild’s living standard, and the income of the support obligor’s new spouse may improve the obligor’s living standard, and thus the obligor’s capacity to pay support. A sensible analysis of child support policy must take the situation of the whole household into account”⁵⁸. Despite Professor Ellman’s acknowledgement that all contributions to a household need to be considered in calculating SOL, the COBS model only uses the natural parent’s income in each household against the SOL benchmark. Therefore, the COBS solution to the statutory dilemma is to disregard any other contributions⁵⁹ - which in turn, invalidates the SOL measurement whenever either or both parties remarry or cohabitate. Therefore, applying Professor Ellman’s own rationale, the COBS model is not a sensible measurement.

4. **Methodology Constitutes the Distribution of the Obligor Parent’s Estate:** One of the other fundamental flaws that an income distribution model assumes is that all of the income earned is used for consumption. While there are debates as to the rate of savings and investing, evidence is clear that people who earn larger incomes are more likely to transfer a portion of their earnings into their estate. This income turned asset is not consumed and therefore does not visibly increase the SOL experienced by members of the household. Requiring a parent to refrain from saving for future needs such as their children’s education or their retirement because a public policy requires payment for undesigned needs in the present would be tragic⁶⁰.

⁵⁶ “In applying this model, a poverty level of support is exempted from each parent’s income, and the remaining income is distributed between the two households in proportion to the number of persons in each family unit. Because total net income is distributed, rather than just the income of the parents, **a current spouse of either parent is counted in the model for purposes of applying the poverty level exclusion, and the income of that spouse is included in the total income of that unit.** Similarly, all dependents, not just the children of the marriage under consideration, are included in the total unit” (emphasis added) Judith Cassetty & Fran Douthitt, *The Economics of Setting Adequate and Equitable Child Support Payments*, 12 Tex. St. Bar Sec. Rep., Fam. L., Special Support and Visitation Issue (1984); see also Robert Williams, *Development of Guidelines for Child Support Orders: Advisory Panel Recommendations and Final Report*, at II-88 (U.S. Dep’t of Health and Human Services, Office of Child Support Enforcement, 1987); Robert Williams, *Guidelines for Setting Levels of Child Support Orders*, 21 Fam. L.Q. 281, 302 (1987).

⁵⁷ “State law does not allow us to consider income from a new spouse. See, for example, following language from Pacific:” Cohen B. Section II(B)(2) *The remarriage issue*, June 4, 2010, Submission to Guideline Review Committee

⁵⁸ See Ellman, *supra* 6

⁵⁹ In the June 4, 2010 GRC meeting, a motion was passed to allow the consideration and inclusion of some income from another member of the household to the extent that it can be demonstrated that there is a direct reduction of the CP or NCP living expenses. It is unclear what percentage this may represent of the HH member’s total income and how this factor may vary from one case to another, even with similar circumstances, due to the way that people may structure the appearance of their finances in order to avoid this assigned contribution.

⁶⁰ “Substantial case law demonstrates each of these arguments against what the courts term “excessive child support.” First, the courts have held that excessive child support is a disguised distribution of the obligor’s estate. This was explained in *Ford v. Ford*, 600 A.2d 25, 30 (Del. 1991)”; “When the income of an individual is substantial, he or she will use a smaller percentage of that income to maintain a certain standard of living as compared to an individual with less income. This is because, outside the unusually extravagant lifestyles, only a limited sum can be spent on a standard of living. At some point income is directed less and less towards “needs” and more and more towards savings or investments and thus becomes part of an individual’s estate. The Delaware Child Support Statute certainly contemplates that children share in their parents’ standard of living, even a somewhat luxurious standard of living. . . . But it does not direct or authorize the Family Court to distribute a parent’s estate. The Family Court has no duty or authority to order payments which go beyond the demands of reasonable and generous support, meaning, in this context, enough to share in the respective lifestyles of the parents”; “Thus, support that goes beyond the reasonable needs of a child is no longer “support,” but is a distribution of the obligor parent’s estate. Accord *Anonymous v. Anonymous*, 617 So. 2d 694 (Ala. Civ. App. 1993) (**child support in excess of \$6,000 per month was disguised distribution of obligor’s estate**); *Richardson v. Richardson*, 8 Haw. App. 446, 808 P.2d 1279 (1991); *Heins v. Heins*, 783 S.W.2d 481 (Mo. Ct. App.

5. **Provides an Inappropriate Windfall to the Child:** In high income situations, a child support award can result in a payment that grossly exceeds the child's needs in which case (1) the child receives a windfall or incentive that may interfere with other important trade-offs such as more time with a NCP parent or (2) the additional income is consumed by the custodial parent in ways that confer no benefit to the child⁶¹. In either case, the high payment is not justified.
6. **May Infringe upon a Parent's Right to Direct the Lifestyle of His or Her Children:** There are no laws or policies that require an intact family to share a dictated percentage of income or wealth with their children. "Although entitled to support in accordance with the pre-separation standard, a child is not a partner in the marital relationship, entitled to a 'piece of the action'"⁶². The COBS model results in this dilemma such that income is required to be transferred but discretion must be used by the CP or lower wage earner in how the funds are used. At high income levels and high associated support payments, the collection of extra funds that either should be directed to the child or not directed to the child, depending upon the desires of one or both parents, may result in an extra windfall to the lower wage earner and give rise to parental conflict.

1990) (child support is not to provide for the accumulation of capital by children, but is to provide for their reasonable needs)." (emphasis added) See Morgan *supra* 11

⁶¹ "...a court should not award child support that is in excess of the child's reasonable needs, even where those needs are commensurate with a high standard of living, because this would provide an inappropriate windfall to the child. The case of Stringer v. Stringer, 123 Or. App. 502, 877 P.2d 100 (1994), makes this point. In that case, the father had a gross income of \$39,000 per month. The testimony showed, however, that the child's needs were only \$588 per month. The court refused to award support in excess of the child's reasonable needs, holding that an award in the case of a high-income parent must, at a minimum, be based primarily on the child's needs, as set out in specific supporting findings. Accord In re Marriage of Inwegen, 757 P.2d 1118 (Colo. Ct. App. 1988); In re Marriage of Harmon, 210 Ill. App. 3d 92, 568 N.E.2d 948 (1991); Hubert v. Hubert, 159 Wis. 2d 803, 465 N.W.2d 252 (Ct. App.), cert. denied, 163 Wis. 2d 517, 471 N.W.2d 615 (1991)." (emphasis added) *id*

⁶² "Indeed, to apply blindly the statutory formula to the parties' aggregate income over \$80,000 without any express findings or record evidence of the child's actual needs would constitute both an abdication of the judicial responsibility and a trespass upon the right of parents to make lifestyle choices for their children." *id*

Appendix A: Methodology

Data Structure: The CFDS data structure contains 36 unique data fields for 567 unique case file samples. CPR included a data dictionary to explain the definition, code and source of data for each column. This core CFDS data includes the Income Shares order and worksheet amounts and contains all the information necessary to calculate the COBS order amounts.

COBS Order Amounts: A macro was written to generate the COBS order amounts from the “Simplified Version 4-6-10” COBS calculator provided by the GRC. The COBS order amounts use the following data from the CFDS file: CP (mother, father or equal), adjusted gross income for CP and NCP, number of children, NCP parenting days. Note: This methodology generates a COBS amount that is specific for each of the 567 records in the CFDS. The GRC uses a misleading approach by applying an average scenario of 1 child with 100 parenting days to a midpoint in the distribution of income range comparisons for only 416 records (cases with deviations are discarded).

Tax Estimates: In order to generate net income amounts for each parent, a tax table was built to estimate the applicable tax rate based upon the filing status of each parent (NCP = single status, CP = head of household with dependent count commensurate with the number of children). Turbo Tax 2009 was used to estimate Federal and AZ State tax amounts and the Federal formula for FICA and MED was used for payroll tax amounts. The total combined tax amounts were compared to the annual gross income of both CP and NCP categories in \$1,000 increments to compute a combined tax rate for each increment. The tax rate is then applied against each parent's gross income to generate a tax amount for each parent across all 567 records. In order to validate the tax computations, the actual tax amount estimates by increment were compared to the tax amount estimates used by California and Delaware in each of their child support calculators. The results are remarkably close with a variance of only 1 – 2 percentage points across a wide range of CP and NCP incomes compared. These rates were further compared to the GRC tax estimates and it was found that the rates were comparable in the middle income ranges but (1) lower than the other methods for higher earning NCPs by as much as 5 points and (2) lower than CPs for low income earners by as much as 20 points. This means the GRC net income estimates overstate the taxes for low income earners and understate the taxes for high income earners compared to the method used in other states.

Family Size Factor: To assess the relative standards of living in each household, considering only the natural parents and their children (a flawed assumption in most cases), an equivalency factor is needed to provide for differences in each CP and NCP household. This author used a methodology recommended by Dr. Sanford Braver and Dr. David Stockburger in their publication titled ‘Child Support Guidelines and Equal Living standards’. This equivalency measure uses the category percentages from the Census Bureau's CES Child Expenditure data to determine variations in the percentage makeup of variable, duplicated, unduplicated and ordered child expenditures. Each child has a starting value of 0.7 adult and an exponent of 0.7 is applied to the entire formula to account for family size economy of scale. The resulting percentages are then applied to both parents for each case as prescribed in the publication to arrive at a factor that will provide a measurement of income per adult unit.

State Guideline Comparisons: State guideline comparisons are made for states where reliable state calculators and/or calculation formulas are available. These states include: AK, AL, AZ, CA, CO, DE, HI, IA, ID, IL, IN, KY, LA, MA, ME, MN, MS, NC, ND, NE, NH, NM, NV, NY, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. Generic child support calculators were tested but found to be inaccurate in many cases. These states include: AR, CT, FL, GA, KS, MD, MI, MO, MT, OH, VT, WV. Several income combinations were generated for each state: 20k/2k, 10k/2k, 4k/4k, 4k/2k (AZ avg.), 3k/2k (AZ median). Each scenario was run at (1) 0 parenting days and (2) 180 parenting days. The attached graphs use the 0 parenting day scenario for consistency in the comparison as parenting time adjustments were not always included in the calculator but may be included in the state statutes. A cost of living (COL) factor was also applied to the support amounts to normalize the amounts for comparison purposes of very expensive states and relatively inexpensive states. The rationale is that \$500 applied in OK will result in a much higher standard of living improvement than it will in NY. The state COL rate is a blended rate based upon a population weighted average of the COL rate for metropolitan areas reported for the state.

Transparency is critical when performing data analysis. This author does not guarantee that all methods and/or calculations are correct. In an attempt to help mitigate this risk, all analysis materials generated in this analysis have been offered to the GRC since May 2010.

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